

619 brought more support for his lord; but as the segment expanded
631 his chances of setting himself up as a chief increased and his loyalty
became less certain. Thus the appeal to armed force came only as
one phase in a general struggle for power carried on simultaneously
at many different levels and by a variety of methods. The con-
flicting ambitions of each lord, each a potential rival of the State,
[669] combined to maintain the State and to reduce the likelihood of
successful fission.

The conflict between identification with one's lord and
692 differentiation from him, between what Fortes has called the
643 centripetal and centrifugal forces in a segmentary society, is brought
681 out clearly in the enforcement of the death penalty. Wiese implies
631 that only the Paramount Chief had the legal power to sentence
adulterers to death and that this offence was the ground for the
[684] majority of death sentences.⁴⁴ However, my own informants stated
that senior lieutenants did sometimes sentence people to death
without referring the matter to the Paramount Chief. The Chief
would later come to hear of an incident of this kind and would then
either praise the lieutenant for acting in the interests of the Chief
and for ruling his people well, or else abuse him for usurping the
powers of the Chief and warn him to be more careful in future. A
successful lieutenant might establish his own major segment and
eventually his own State; but if he moved in this direction prema-
[687] turely he was likely to be killed for treason. This same inherent
conflict exists to-day, albeit with different groupings and different
sanctions.

7. Stability

611 The most striking differences between the residential system
619 and most lineage systems were the high rate of segmentation, and
the flexibility of the system. Segmentation in a lineage system
178 depends basically on the unalterable processes of human repro-
duction and maturation. Until a man's children become adults
his agnatic segment cannot split. The Ngoni, by recruiting many
[161] of their members when they were already grown up, were able to
[597] increase their population at a prodigious rate and with it the degree
of segmentation of the State. As the Ngoni army increased in size,
so it became easier for them to capture more people, so that what
we may describe as an inflationary spiral in population was set up.
The Ngoni State was like a snowball which grows larger and larger
as it is pushed from place to place, but still remains uniform
throughout. At last it becomes unwieldy and must be broken

⁴⁴ Wiese, 'Expedição', pp. 471-2, and 'Geschichte', pp. 189-90.

439 regarded as a territory which would supply Native labour and,
648 possibly, cattle to the south. Little attempt was made to develop
[464] the resources of the territory itself, and indeed in so far as Mpezeni's
country was concerned, the B.S.A. Company had ceded its rights
to do so to the North Charterland. The general pattern of White-
Black participation in economic activity was taken over from South
Africa, whence many of the early settlers came, and there was no
attempt to train a Black *élite* to perform skilled tasks. Apart from
the Ngoni and the Bemba, the Black population of North-Eastern
Rhodesia had been taken under the administration of the B.S.A.
Company without serious fighting and their chiefs did not have the
opportunity to become leaders of opposition against the Whites.
The Administration wished to keep its expenses low and found that
[643] the cheapest way of running the country was through the
[622] indigenous chiefs and headmen. Hence a system of administration
grew up which was in many respects similar to that later known as
Indirect Rule.⁴ Chiefs and village headmen were placed under a
statutory obligation to preserve law and order among their people.
Some of them were paid a few shillings a year for their labours and
were given ceremonial spears of office. There were no formally
constituted Native courts, as there are now, but minor cases of all
[692] kinds were heard by indigenous tribunals, and the authority of
these tribunals appears to have been upheld by the Administration
in so far as their judgments were regarded as maintaining law and
order. Indeed on occasion the Administration indicated to chiefs
what kinds of cases they should deal with and what should be
referred to the Administration. The collection of tax, one of the
[651] most important activities of the early administrators, was carried
out with the assistance, or the enforced co-operation, of the Black
[444] leaders. Labour recruiters appear to have operated in much the
same kind of way. Thus the commoner in his village found that to
a considerable extent access for him to these new White agencies
was along the traditional chain of authority through headman and
chief. The missions were to a greater extent concerned with
[797] establishing relationships with individuals without reference to
their position in indigenous society, but even they tried occasionally
to work through chiefs and other notables. Thus despite the
changed situation, the indigenous order was utilized by the White
invaders and in so far as that order was useful to them they
endeavoured to uphold it.

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Nevertheless, the encouragement given by the Administration
to recruiters of labour from the south, and the economic necessity

⁴ cf. Hailey, *African Survey*, pp. 452-3.

361 interests and those of neighbouring tribes against the North Charter-
648 land and the White settlers. Ngoni themselves have not been in a position to enforce their own point of view.

648 In the operation of the legal system White control has never
692 been so complete, as we have indicated above. However the support given to the judgments of chiefs and others by the Administration prior to 1929 was political rather than legal, and the courts held by chiefs with or without the approval of the Administration did not form part of the same legal system as the Administration's own courts. In that year Native Courts with defined powers were established as part of the same legal system as other recognized courts in the British Empire, with ultimate connexion to the Privy Council.¹⁶ In matters of religion White dominance has been achieved more slowly and has never been complete. But even in
[797] this field the religions brought by the Whites have triumphed over
[769] the cult of the chief's ancestors and to-day it is the Christians who are the ritual experts.

A parallel sequence of events has taken place in Nyasaland, save that there the amount of land alienated in the Fort Manning area has been small. A scheme of administration was given a legal basis in 1912, and was similar to that in Northern Rhodesia. It was revised in 1924, and in 1933 Native Authorities and Native Courts were set up.¹⁷ The two principal missions in Fort Jameson District
[797] have stations in Nyasaland as well.

651 In both countries Ngoni have been required to pay tax. A hut tax was introduced on the Rhodesian side of the border in 1901
648 and at about the same time in Nyasaland. The annual rate has varied in Fort Jameson District from three to ten shillings. The imposition of tax has been of importance, not only in partly meeting the costs of Administration, but also in bringing Ngoni men and women into the wider economic system of farms, mines and offices of southern Africa.

177 Thus the Whites established control over the Ngoni in most
648 of their important external relations. Politics, settlement, litigation, religion and economic activity have all been moulded by the Whites. In many respects this has been a passive process, for little that the Ngoni have done or not done has been significant to the decision to set up Native Courts, or to expand the production of tobacco, or even to open up a mission of some new denomination.

¹⁶ By Ordinance No. 33 of 1929. Subsequent legislation is contained in Ordinances No. 10 of 1936, 18 of 1940, and 21 of 1942.

¹⁷ Legislation is to be found in Ordinances No. 13 of 1912, 11 of 1924, 13 of 1933 and 14 of 1933.

TABLE V. COUNTY SEGMENTS

County ¹	Specification of county segment	Hereditary name of county chief
4	Residual after formation of segments 9 to 12	Madzimawe
5	Primal	Zulu
6	Primal	Mlonyeni
9	Primal	Mnukwa
10(a)	Residual after formation of segments 13 to 15	Mpezeni
11	Residual after formation of segment 16	Misholo
12	Primal	Mshawwa
13	Primal	Kapatamoyo
14	Residual after formation of segment 17	Nzernane
15	Primal	Sayili
16	Primal	Teleka (b)
17	Primal	Maguya

(a) Paramount Chief's county.

(b) The first chief of this county was known as Mlonyeni. He was succeeded by his brother, who kept his own name of Teleka. The similarity of name with the chief of segment 6 was accidental.

¹ [County numbers refer to map on page 120, category 116-A, Analyst]

The county segments are not all of the same order of segmentation, yet the counties occupy positions of equivalence in the Native Authority. Each of the eleven counties under minor chiefs is, or has been for most of the time, the area under the control of a Subordinate Native Authority and also the area of jurisdiction of a second-class Native Court. According to the *Official Gazette* the Paramount Chief's county appears not to have been under any Subordinate Native Authority, nor does it seem to have been provided with a second-class court, but in some respects action takes place as if there were such an authority and court. The Superior Native Authority is responsible for all ten counties in Northern Rhodesia and there is a first-class Native Court for the same area. Thus the structural alignment of the twelve counties is markedly different from that of the segments corresponding to them. In practice the relations existing between the twelve counties and

[Text continues on page 123]

5. *Relative status of Chiefs*

178 There was nothing inherent in the residential system which
631 facilitated the emergence of twelve, and only twelve, counties from
634 Mpezeni's people. Each major segment already had a large number
648 of lesser segments within it in 1898, and it was during the unsettled
years that followed the conquest, when new schemes of organization
were tried out, when fresh occupants were sought for existing posts,
and when the spatial distribution of people was being radically
altered, that these twelve gradually emerged. Considerations of
size do not seem to have been very important, for there is a wide
variation in the size of counties. However, with the development of
the Native Authority and Native Court, there is an upper limit to
[692] the size of the county which can be served adequately by a single
court and possibly by a single minor chief, and this shows itself in
the moves towards forming sub-counties within one or two of the
larger ones. Yet in view of administrative attempts to do away
with certain chiefs, it seems that in its eyes the Ngoni have too many
rather than too few chiefs. The order of segmentation is not critical,
as we have seen. Nor has there been merely an ossification of the
formal structure as it was at the moment of conquest, as is often the
case when a fluid society is suddenly put into a rigid mould. Wiese
in 1891 wrote that Ngoniland was divided into four districts.²⁰ In
our terms, these were as follows:

- (a) Primal segment 11.
- (b) Primal segment 14.
- (c) Residual segment 10 after 14 was formed.
- (d) Residual segment 4 after 10 and 11 were formed.

Of these four districts, the first has given rise to two counties, 11 and 16; the second to two, 14 and 17; the third to three, 10, 13 and 15; and the fourth to three, 4, 9 and 12. Wiese does not indicate in what districts he would place segments 5 and 6.

The fortuitous manner in which the counties have emerged is illustrated by the fact that for certain purposes one of the counties is treated as if it were two. At one time, when there were more administrative divisions than there are now, it was divided into two areas, and this arrangement still persists for tax collection. Other
[651] counties have only one tax register book each, but this one has two.

In genealogical terms also, the emergence of the twelve chiefs appears to have been fortuitous. For example, the second wife of
[643] Mpezeni I in segment 10, after the formation of segments 14 and 15,

²⁰ Wiese, 'Expedição', pp. 469-70.

1: Barnes E-5 (1946-1949) 1954 FR5 Ngoni FR5
Mpezeni

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divination are not well developed among the Ngoni as means of influencing action. The attempt to establish a new county failed for lack of Administrative support. Chiefs still continue to express their rivalries through sorcery, and would-be chiefs still attempt to establish new counties. 578
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When Mpezeni II died, his heir was still young and was out of the country at boarding-school. A minor chief, after quarrelling with one of the dead chief's lieutenants about the funeral arrangements, proposed that the heir should remain at school to finish his education and that meanwhile there should be a regency. However the Administration arranged for the immediate return of the heir. [872]

The rivalry between the Paramount Chief and his minor chiefs shows itself in other less dramatic ways. Thus the Paramount Chief's advisers told me that all cases coming on appeal from the courts of minor chiefs were heard in the Paramount Chief's own court of first instance, and that only if the verdict given there was not accepted was the case referred to the Appeal Court which was held at the administrative centre of the Paramount Chief's county every month. The minor chiefs and their advisers told me that cases sent on appeal from them went direct to the Native Appeal Court, and emphasized that this court was composed of several minor chiefs and their councillors, called upon in rotation. In practice, as I observed in the course of my work, sometimes one procedure was followed, sometimes the other. 643
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On the other hand, the minor chiefs and other politically important people support the Paramount Chief in his relations with the Administration. When recently Ngoni thought that the Administration was not treating the Paramount Chief with the respect due to his position, two minor chiefs endeavoured to organize a petition to the Administration on the matter. When the Paramount Chief's deputy was put in prison by the Administration for embezzlement, it was a minor chief who protested most strongly to the Administration. However dissatisfied the minor chiefs and people may be with any particular Paramount Chief, there is little dissatisfaction with the Paramount Chieftainship. This is still the feature of their organization which in Ngoni eyes most clearly marks them off from their neighbours, and which most clearly links them in their present lowly condition to the exploits of their illustrious forefathers. 643
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3. *The chief's advisers*

The men who advise the chief, who enjoy his confidence and his hospitality, belong to a number of different categories. In each 634
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chiefs and district headmen, were in undifferentiated charge of people. With the formal introduction of Native Courts came provision for the systematic review of judicial decisions by the Administration. To do this some kind of written record was necessary. Many chiefs could not write and court clerks had to be appointed. At the same time the posts of councillor and assessor were created, the former to assist the chief in his executive and legislative capacity as a Native Authority, the latter to help him in his judicial capacity and to constitute with him the Native Court. Messengers¹⁰ were employed to preserve order in court, serve summonses, make arrests and restrain the violent. Under the Ordinances, the Native Authority has power to make rules and orders on a variety of subjects, subject to confirmation by the Administration. The Native Courts are competent to enforce these rules and orders, as well as to administer 'tribal law' and certain items of Administrative legislation delegated to them. They can impose fines or sentences of imprisonment or whipping. In civil cases they can award damages, and charge a hearing fee, but the Ngoni do not distinguish between the fee and a fine.

In 1938 an Ngoni Native Treasury was established and a treasury clerk appointed to run it. After a few years the Administration transferred a larger share of general revenue to the Native Treasury and increased the activities for which the Native Authority was responsible. At one time much of the finance of the Ngoni Native Authority School, opened in 1938, was handled by the Native Treasury, though this was largely a matter of book-keeping. The Native Authority assumed responsibility for the construction and maintenance of roads through the reserves, the care of wells and dams constructed by the Administration, and the provision of messengers to act as police at the lorry-checking points on the main roads. More recently it has become responsible for ghee production, for a demonstration farm and for a nursery of fruit trees. It has had to arrange finance for new school buildings and county granaries and to build these by direct labour. To handle the money for these enterprises there has been a treasury clerk and, recently, an assistant who also helps with the collection of Native tax. The Native Treasury acts as accountant for all these activities but the extent to which the Administration, in one guise or another, directs their carrying out varies considerably.

The revenue for the Treasury is derived from a share in the Native tax, from the sale of licences for dogs, bicycles, arms,

¹⁰ Usually known by the vernacular term *kapanu* in distinction to the district messengers employed directly by the Administration.

7. *Capital, court and chief's village*

634 We have spoken of the headquarters of the county segment as the capital of the county, and this is in accord with vernacular usage. Although each chief is head of his county segment, no chief lives in his capital village. Each has made his segment and set up a village of his own. This process continues with each successive chief, each making his own new village. When brick buildings [344] were made during the 1930s to house the newly recognized Native Courts, these were located near the villages of the reigning chiefs. Some of these are still in office, while others have died and their successors live in their new villages, some of which are as much as two miles away from the court. There are thus in some counties three foci of political interest. There is the capital village, the court, and the chief's village. Associated with each centre are different leaders and different activities. The capital village provides a link with the past, and in particular with that moment in the past at which the segment was founded. The Paramount Chief [643] retains special rights in his capital village and can make a garden for one year on the old site of his county capital whenever it moves to a new one. Most, if not all, capital villages are larger than the average village but the senior lieutenants of the county segments do not live in them, for like the chiefs, they have made their own villages. Nevertheless, the lieutenants who do live in the capital [554] are regarded as people of considerable importance in the county. Meetings are sometimes held in the capital but more frequently at the county court or in the chief's village. The court is the home of the Native Authority, and it is there that the affairs of the Administration are discussed. An incident well illustrates the association of the court with the Administration. I once called at the house of a county chief who had not previously met me. He insisted that I should go to the court to meet him there, as that was where he always met Administrative officials. County meetings are called at the court to discuss matters raised by the Administration in its letters to chiefs, and to formulate requests and complaints for transmission to the Administration. The court clerk, the Native Authority councillors, assessors, and messengers are much in evidence, while the traditional advisers of the chief, his senior lieutenants, may be in the background even if they are not silent. Meetings of this kind are usually called by county chiefs, but occasionally a meeting may be held open to the whole tribe. I have described elsewhere the procedure at a county meeting.²²

²² Barnes, 'Political development', pp. 107-9.

687 kind are referred to the Administration, it may sometimes act in the
648 way desired by the chief and his lieutenants. Thus a chief once
discovered his wife in bed with a lover. The man was eventually
caught, and there were some who urged that he be hanged right
away, for no one would tell the Administration about the matter.
[684] However, more cautious counsels prevailed, the incident was
referred to the Administration, and the man was sentenced, in
accordance with the wishes of the chiefs and their lieutenants, to
three months' imprisonment. On his release, he was escorted from
Ngoniland by a chief. Later the man returned, only to be driven
out again. The Administration is concerned with upholding the
[696] position of chiefs, and in situations of this kind may regard, say,
adultery with a chief's wife as more heinous than with a commoner's
wife. On the other hand, the Administration cannot be relied on to
give its support automatically, and for this reason chiefs and lieutenants
may decide to act without reference to it. The Administration
has even on occasion awarded damages to a commoner
against the Paramount Chief.

634 It is perhaps significant that a minor chief whose county contained
a comparatively large number of villages from the segments
of other counties and whose claims to the county chieftainship was
disputed decided to hold a meeting to discuss county affairs not at
his court or at his village but at the capital of the county. He may
have hoped to quell dissension by emphasizing the links with the
pre-conquest past shared by the majority of his people.

344 Now that chiefs and others have begun building in burnt
182 brick, it may be that newly acceded chiefs may not find it so easy
361 to found their own villages. At the same time the policy of building
other public buildings in brick, such as treasuries and the proposed
welfare halls, in the vicinity of existing courts, may give increased
importance to the Native Authority centre. Already there have
been one or two attempts at opening shops near the courts to cater
for the needs of litigants, and it seems likely that the effective social
centre of the county will in future be the site of the Native Authority
rather than the capital village or the home of the chief.

8. *Politics and the courts*

692 The day-to-day work of the court takes up much of the time of
chiefs, assessors, and senior lieutenants of the chief. General discussion
of Ngoni law lies outside the particular theme of this book,
but we are here concerned with the courts in so far as they form part
of the political system of the tribe. That there is a close connexion

between political and judicial actions is not surprising. There is a connexion of this kind in every society, and the connexion is a particularly close one in societies like the Ngoni, where the same individuals act as legislators, administrators, and judges, and where the court does not confine itself merely to the legal issues in a dispute but examines the whole network of social relationships which are involved, with the object of restoring social order.

There are three ways in which this connexion can be seen. First, the court may be used as a vehicle for implementing the policy of the Native Authority. Secondly, the Administration may use the court to implement its policy. Thirdly, positions in the court may be used to satisfy men who seek political authority. We have to deal with the third point in our discussion of the development of the Native Authority.

A chief anxious to gain favour with the Administration sees that his court enforces with heavy penalties the various regulations with which, for the time being, the Administration is concerned, such as those relating to agricultural control, and school attendance. A chief who does not wish to co-operate will neglect these regulations. Thus a few years ago there was a regulation that once a child had begun a two-year course at school, he or she must stay to finish it. In one county this rule was enforced much as the letter of the law indicated, in another it was completely ignored despite the protests of school-teachers, and in a third it was interpreted to mean that every child must go to school. About a year later the Administration decided that as promulgated the rule was *ultra vires*, and said it must be withdrawn. Nevertheless in some counties it is still enforced. These chiefs and courts are not being merely capricious. Some chiefs support the missions and their schools, others oppose them; some are in alliance with the school-teachers and other intelligentsia in their counties, others oppose them. These various attitudes and alignments are reflected in the way in which they respond to a new law. This is particularly noticeable when public delicts, such as absence from school, are concerned, for in general the court is its own law-enforcing agency. There is no independent police force to bring offenders to court whether or not the court wants to see them, but only the assessors, court clerk, messengers and others who, when they are not busy about their own affairs, may if they are so inclined wander through the villages looking for unlicensed dogs and unlicensed beer. Thus the enforcement of law relating to public delicts depends largely on the relationship between the Native Authority and the common people.

696 In the court itself the magnitude of the penalties imposed and damages awarded is to some extent at the discretion of the court, and political considerations, among others, may influence judgments. Adultery with the wife of a chief is more heavily punished than ordinary adultery, and people from other tribes, particularly [681] the Yao, are discriminated against. Ngoni courts maintain that [186] they recognize only Ngoni law, even though the disputants may belong to other tribes. These ideas are familiar enough, but they indicate that questions of group membership, that is, political affiliation, and relations between groups, do influence the actions of the court. Within a county, hostility between a group having [578] the ear of the court and one lacking it may find expression in procedural obstructions, such as always hearing a particular suit at the end of a day, or of continually postponing the hearing because some minor witness is absent.

661 The chief and his advisers usually endeavour to maintain a 648 monopoly of access to the Administration, and this endeavour is 696 largely supported by the Administration as a matter of policy. In the particular sphere of legal action, appeal from the Native Court to the District Officer is sometimes regarded as a challenge to this monopoly, and litigants are sometimes punished for stating that they intend to appeal. In a celebrated recent case when a chief was successfully sued in the District Commissioner's court for damages for adultery, his people came to him afterwards to express their condolences, as after a funeral, at the injury done to his high office by this procedure.

692 Native Courts are formally recognized under Ordinance by 648 the Administration, and hence changes in the indigenous legal system brought about by the Administration are legal changes, in that they have behind them all the paraphernalia of Ordinances, Letters Patent, Orders-in-Council, and Acts of the United Kingdom Parliament. This gives a special quality to manipulation of the legal system by the Administration, for this is really only another way of saying that effective sovereignty lies with the British Crown and not with Paramount Chief Mpezeni. But within the framework of analysis of the local situation, the actions of the Administration and of the chiefs in controlling the working of the courts are comparable sociologically.

The Administration is continually exercised about the quality of the work done in Native Courts, and in so far as all cases heard in Native Courts are subject to revision by the District Commissioner a direct check is, or could be, exerted on the way in which the courts operate. But Administrative intervention goes further

than this. Annual reports often draw attention to the smooth working of Native Courts and their impartiality, while attempts are made to establish British rules of evidence and of legal procedure generally. By trying thus to isolate the judiciary from the Native Authority and, more recently, by the proposal to introduce an entirely separate police force into rural areas, the Administration is engaged on an active policy of social change. One change that has already occurred widely is in the role played by the chief in his court. We have seen that traditionally disputes were settled by the senior lieutenants of the segment concerned and referred to the chief only if the lieutenants did not agree, for the chief represented the unity of the people and was above all disputes. When Administrative officers began to supervise the work of Native Courts they usually interpreted the chief's absence from his court as neglect of his duties. Pressure was put on chiefs to attend and participate in their courts, another step towards the secularization of their office. Nowadays some Ngoni chiefs stay out of their courts, others actively hear cases in them, and others drift in and out, sometimes intervening, sometimes waiting for difficult issues to be referred to them. The changed Native Court is one of the agencies whereby the transition from small-scale to large-scale society is to be made. The very successes which were hailed generally for Native Courts in Africa on the introduction of Indirect Rule are surely evidence of the importance attached by the Administration to maintaining courts of the right kind. [648 692 696 177]

The role of the court in the essentially political relationship between the Administration and the Native Authority is made clear when we consider the sources of law enforced in the courts. I have described elsewhere²⁵ how many of the regulations sought for by the Administration are introduced as Native Authority Rules and Orders, which are then approved by the Administration. This is a harmless legal fiction which worries no one, since new legislation emanating from within the counties is enforced or not quite independently of whether or not it is referred to the Administration and is included in its list of Native Authority legislation. But it is significant that even this fiction can have political significance, for recently it was suggested that a soil erosion law, which had been introduced as a Native Authority Order, would be more accurately described as an Administrative rule which the Native Courts were empowered to enforce. This suggestion was rejected by a meeting of chiefs, who stated that they wished to retain the [648 671 692]

²⁵ Barnes, 'Political development', pp. 102-3.

648 rule as a Native Authority Order.²⁶ Thus the chiefs preferred to
671 appear as legislators enforcing their own laws rather than as the
692 judicial agents of the Administration.

Besides the Administration, other groups external to the
692 indigenous system endeavour to influence the action of the courts.
664 Thus missions work through chiefs to try to prevent the granting of
[797] divorces in the courts, traders endeavour to get their disputes with
Africans heard in Native Courts rather than in those of the Adminis-
tration, and farmers request courts to hear promptly cases which
concern their employees.

671 Occasionally the Ngoni chiefs meet together with their people
and formally make a new law. This appears to have happened
646 about once in each decade. Yet in the courts new decisions are
661 constantly being taken since the circumstances in which disputes
arise are continually altering. The way in which these decisions
are imposed throws light on the position of the court within the
county, for many of these new decisions, precedents as we would
call them, are introduced under the guise of a revival of some good
but lately neglected tribal custom. There is no recorded corpus
of Native law and custom which the Native Courts are empowered
to enforce and, therefore, to say that a new decision is merely a
revival of an established usage satisfies the requirements of the
Administration, provided the usage is not 'repugnant to natural
justice and morality'. On the other hand, it enables the court
members to legislate without referring the matter to a meeting of
the whole tribe or county, at which anyone would be free to speak
his mind. Thus the group of persons who are in power in the court
further entrench their position.²⁷

9. Moral and physical sanctions

692 The counties and the tribe persist as social groups despite the
648 ease with which their members may move away to other sur-
626 roundings. The Native Authority remains in power, and its courts
are full of litigants, despite the unequal distribution of privileges
and rewards. In a general sense the system works because there are
moral as well as physical sanctions behind the rulings of the court.
There is general agreement about the rights and wrongs of the
actions with which the courts have to deal, and it is this that in the
[68] end usually makes a man pay damages and fines that have been
awarded against him rather than the threat of the Administration's
force behind the court. The decisions of the courts are subject to

²⁶ *African Affairs, report, 1948, p. 47.*

²⁷ For a further analysis of this legislative process, see my paper, 'History'.

review by the Administration, but in practice the cases are so numerous, the written account of them so brief, and often the handwriting of the record so bad, that it is difficult to make an adequate review. The Administration is able to keep some check on the financial transactions of the courts, and convictions for embezzlement are not uncommon; but the Administration does not greatly influence the decisions taken by the courts nor their enforcement. For though there are police on the lorry routes and crocodiles in the rivers, it is fairly easy for a determined man (or woman) who is dissatisfied with the treatment he has received in the courts to get away. He can usually get to a White farm or to a town, and once there it is not so easy to get him back. Men are not continually running away from the courts, for they usually accept decisions given against them, though appeals from a minor chief's court to the Ngoni Appeal Court are fairly common. Few people take their appeals further to the District Officer, and I have never heard of a case going on appeal beyond the Provincial Commissioner's Court. [692] [626] [648] [696]

The general moral approval by the people of the work of the courts which lies behind much of the effectiveness of the Native Court system does not extend automatically to all legal action as such. There is no widely held view that the decisions of the courts must be supported merely because they are the decisions of the courts. Some courts are good, some bad; and some decisions are good, some bad. The great majority of cases that come before a county court are brought by men and women living within the county, but sometimes a litigant begins his suit in a county court not his own, particularly in the Paramount Chief's county court, if he thinks that he will get a better hearing there. Yet chiefs support each other and a case brought before a chief by litigants from another county are sometimes thrown out, in accordance with the Native Courts Ordinance. [692] [691]

There is little moral sanction attaching to legal procedures, or methods of appeal, or even to the particular sums awarded as damages. The members of courts tend in the main to uphold each other's decisions, so that there is a fair amount of conformity throughout the ten counties. All those who work in courts have in fact an interest in increasing the power of the court system, which the people as a whole have not. Disputants will settle out of court if they can, for it is not so far to walk and the whole process is not so disruptive of social ties, but members of a court will sometimes challenge the right of independent arbitrators, village headmen and the like, to come to any binding decisions. [692] [687] [627]

for a few heaps of stones hidden among the trees on the tops of hills. People visit back and forth freely, except for the control imposed at the customs barrier on the one lorry road. Many people grow vegetables in Nyasaland, where there is more land, and sell them in Northern Rhodesia, where there is a better market.

While this territorial proximity gives rise to a multitude of ties linking individuals across the border, it does not lead to new political relations between the counties with a common boundary. Such political relations as do persist are survivals from the old order. Although the formal structure of the Native Court system, as determined by the Nyasaland and Northern Rhodesia Administrations, does not permit it, cases sometimes come on appeal from the Nyasaland counties to Mpezeni. There is official visiting between chiefs across the border, and when the Paramount Chief is short of food he may ask the Nyasaland chiefs to send him a few baskets of maize. But despite the nearness of the Nyasaland chiefs to Mpezeni in spatial terms, their political interests lie mainly in the opposite direction. They are the only two Ngoni chiefs in that district of Nyasaland and most of the chiefs whom they meet are Cewa. Their Administration is separate from that in Northern Rhodesia, their laws are different, and they look towards Zomba rather than Lusaka as the seat of Administrative power. We have noted how Mpezeni I contemplated moving into Nyasaland in 1897. As late as 1922, when the Native Reserve scheme was under discussion, Mpezeni II made some preliminary soundings on moving across the border, but already by 1946 such projects were overshadowed by the prospects of federation for the two countries of Northern Rhodesia and Nyasaland.

The people of the two Nyasaland counties are subject to the same general influences as are their Northern Rhodesia neighbours in such matters as increasing dependence on an exchange economy and the development of a cognatic or omni-directional kinship system in which links can be traced through spouses as well as through fathers or mothers. Yet even in economic activity there are significant differences. In Nyasaland, Africans grow tobacco for sale, while the Ngoni in Northern Rhodesia are not able to do so; recruiting for the Rand gold-mines is allowed in Nyasaland and prohibited in most of Northern Rhodesia, including the Fort Jameson area.

The annual meetings of the African Provincial Council of the Eastern Province are attended by representatives from each tribe in the province, two people from Fort Jameson township, the Provincial Commissioner and sometimes a representative of the

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CHAPTER II

THE NGONI KINGDOMS

In 1933, by the Native Authorities Ordinance and the Native Courts Ordinance, Mbelwa was recognized as Paramount of the northern Ngoni kingdom with six Subordinate Native Authorities under him, and his court was constituted the appeal court for their six courts. The same procedure was followed in the central kingdom for Paramount Gomani with six Subordinate Native Authorities, and his court as the appeal court for their courts. They were the only rulers in Nyasaland with S.N.A.¹ under them. Two other chiefs, Cikulamayembe of the Henga in Mzimba district and Kyungu of the Ngonde in North Nyasa district, had respectively four and five courts subordinate to them, but the chiefs owning these courts were not recognized as their subordinates. The Ngoni comment on these ordinances was 'Ha! Now they see what big chiefs we have. Only our chiefs are called *inkosi*.'

The northern kingdom was in Mzimba district, and Paramount Mbelwa's royal village was at the southern end of his kingdom. The central kingdom included the whole of Ncheu district with Paramount Gomani's royal village at the northern end. This kingdom had Portuguese territory on its western frontier, close to the royal village. When the Portuguese boundary was fixed in 1891, the Ngoni kingdom under the Maseko Paramount was cut in two and a section under a Maseko ruler became a separate kingdom under the Portuguese. There was constant trouble in the 1930's over this Portuguese frontier, for Gomani's Ngoni visited their relatives, grazed their cattle and hoed gardens on the Portuguese side; and from time to time claims by the Portuguese for rent for gardens and grazing lands and disputes about taxation, needed judicious handling in the District Commissioner's court.

The figures in Table II for Mzimba and Ncheu districts in 1926, 1931, and 1945 show the changes in the ethnic composition of the districts, some of which are difficult to account for. In Mzimba district the Henga under Cikulamayembe were included in the figures for the Tumbuka and hence the northern Ngoni kingdom did not include all the 156,208 in the district. In Ncheu, the total district population of 87,690 were all included in the central Ngoni kingdom, showing the mixed ethnic elements, among which the Ngoni, or those who were enumerated as Ngoni, had declined from 64,023 in 1926 to 15,242 in 1945. Between 1931 and 1945 the decrease in the number of Ngoni (31,066) was almost balanced by the increase in the number of Nyanja

¹ This abbreviation will be used henceforward in referring to Subordinate Native Authorities.

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[P. 88]

CHAPTER IV

COURTS AND OFFICIALS

121 THE Ngoni claimed that when they established their kingdoms in
 177 Nyasaland they introduced a new idea of law, a different system of courts,
 671 and a different procedure for conducting cases in those courts, from
 those found among the local peoples. Within their kingdoms they im-
 posed on all their subjects these ideas, courts and legal procedure as
 part of their government, applied to the conquerors and the conquered
 alike. We shall consider in this chapter only those aspects of the courts
 and the legal system which were related to the political structure. The
 categories of crime, the degree of punishment, the sanctions for enforce-
 ment of the law, and the effect of the judicial procedure on the balance
 of equilibrium in the community, all belong to a specialized study and
 are not included here.

THE NGONI CONCEPT OF LAW

692 We begin with two texts, the first from the northern kingdom by
 643 Cibambo, the second by Ishmael Mwale the Treasurer of the Para-
 671 mount in the central kingdom.

671 ¶ (1) The Ngoni seem to have been born with a gift for leadership or rule.
 Though they were a wandering tribe, yet there was one Paramount from
 whom proceeded the laws for the good government of the people. All the
 lesser chiefs and headmen received from him the leadership of the people.
 [203] Though they had no way of writing to each other, they kept their unity
 by messengers passing between them. The Paramount had power to call
 gatherings from time to time, in which they talked of the affairs of the
 country. In these gatherings the old men and the men of repute who had
 a point to make were heard in criticism and made suggestions for the
 building up of the realm. By this means the Paramount and his counsel-
 lors learned of and understood the thoughts of their people. It was in such
 large gatherings that the laws of the country were delivered to the people,
 so that they might hold fast to them and not be punished unreasonably for
 breaking them in ignorance. After they came back from these gatherings,
 the headmen and men of standing gathered together their villages to tell
 the people what had been spoken in the great council of the Paramount,
 and told them carefully about the laws which had come from the
 gathering.

173 (2) Before the Ngoni came to this country the villages were small and
 671 isolated from one another. There was constant pouncing on people to
 catch them as slaves. It was unsafe to go even a quarter of a mile from one
 village to another, because a man might be in hiding and pounce out and
 catch you and take you off to his village as a slave, and there was no
 redress and no case was heard. Most people never went beyond the

COURTS AND OFFICIALS

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boundaries of their own village, and they were afraid to travel even in a large party of twenty or thirty. So no one had any wisdom beyond that of his own village and family. When the Ngoni came they had one law for all people and they had courts to hear cases where this law was enforced. There was freedom to travel in the land where the Ngoni ruled, because they had peace within their boundaries. Therefore, we say: this was the kind of peace we had.

In these two texts we have one major concept of Ngoni law with three chief ways in which it was implemented. The concept was that there was 'one law for all people' and that the knowledge of and enforcement of this law brought internal peace and resulted in good government in the country. There was one source of law as there was one source of political and military authority—the Paramount. As Cibambo points out, the Paramount delegated his authority for carrying out the law to chiefs and headmen and depended on his 'old men and men of repute' to keep him in touch with the thoughts and desires of all his subjects, so that he might adjust the enforcement of the law to bind the people to him. He also called large gatherings of all the chiefs and *alumuzana* and headmen in order that they might hear from him any new laws and regulations and understand them so that they in turn could make them known to their people. In the intervals between the holding of these large gatherings, which took place not more than once or twice a year, messengers passed constantly from the Paramount's village to all the areas of the chiefs and *alumuzana*, reporting to them about decisions taken at the royal village on matters affecting the country as a whole, and taking back reports to the Paramount on what was happening in the outlying districts.

I attended two of these annual meetings of the chiefs and *alumuzana* and headmen in the central kingdom. They took place not at the Paramount's village but at a more central spot for the whole territory. The people were drawn up in a square formation, with the Paramount at one end supported by his 'mouthpiece' (*mlomo wenkosi*), who always spoke for him, with the six Subordinate Native Authority chiefs beside him, and the councillors (*isinduna*) messengers and other officials of his court and of the S.N.A. courts arranged in order of precedence, facing the crowd as they did during court sessions. On the three sides of the square in the front ranks were the *alumuzana* and the headmen of their villages, sitting in territorial groups, and behind each headman were the *madoda* or senior men of the village, and behind them again the *amajaha* or young men. I watched this assembly of 3,000 to 4,000 people being arranged, as they arrived, by the *isinduna* of the Paramount's court and the *isinduna* of the six chiefs. They took up their places as though on a military parade, and once placed there was no further movement. The effect was that of a barrack square in the straightness of lines and orderliness of behaviour. After all was in order the Paramount

631 arrived, and there were deep-throated shouts of '*Bayete*' until he sat in
 643 his chair. The proceedings were under complete control from beginning
 692 to end. After a brief introductory speech, delivered for the Paramount
 645 by his 'mouthpiece', the matters for the assembly were introduced one
 by one by the councillors of the Paramount and were spoken to first
 'from the platform', that is from the group round the Paramount. Then
 it was open for any of the *alumuzana* or headmen to speak 'from the
 floor'. They did so vigorously but respectfully, and there appeared to
 be no hesitation in putting forward views which were divergent from
 those expressed 'from the platform', and questions were asked with
 freedom.

[744] The topics covered a wide range of subjects and dealt partly with
 matters sent on by the Administration and partly with the enforcement
 of regulations emanating from the Paramount for his area. A letter from
 the health authorities about the incidence of bubonic plague in Southern
 Rhodesia was accompanied by an order to kill all rats and rabbits.
 Several headmen stood up and said they had heard by letter from men
 in the south about this. The Agricultural Department sent a notice
 exhorting men to take up gardens, and to go and settle and build villages
 below the escarpment where cotton and tobacco could be grown for
 sale. Those who went there as a group under a leader, so the notice said,
 would have that leader recognized as a headman. This drew a number
 of comments from the audience, some warmly supporting the scheme,
 others opposing it. The supporters welcomed the chance of earning
 money from cash crops and of having new headmen recognized in the
 new villages. The opposers repudiated the idea of setting up new villages.
 'Why should we divide ourselves? We have our chiefs and our head-
 men. Let us stay together' was their theme, adding as a significant after-
 thought: 'If we go to those hot lands, our cattle will die'. The Para-
 mount had introduced a marriage certificate for which a shilling had to
 be paid at the chief's court when the marriage was registered. Very few
 [651] 585 shillings were coming in and the Paramount wanted to know why. A
 number of men leaped to their feet and wanted to speak, and the
izinduna had to keep order by pointing to individuals: 'You, what are
 your words?' The gist of that discussion was that Christians had to pay
 a shilling to the mission for being married in church, and they wanted
 to know if they must pay another shilling to the Paramount. His verdict
 was that Christians would have to pay twice because it was his law that
 marriages must be registered in the courts. There was much talk among
 the audience during and after this discussion and the *izinduna* had to
 call for order several times.

[648] Two well-received items on the agenda were that permission had
 been given by the Government for villagers living on the Portuguese
 boundary to go and hoe gardens over the frontier. This use of lands
 over the frontier, both as grazing-grounds and as gardens, had been

COURTS AND OFFICIALS

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going on for years. The land was apparently unused by anyone on the Portuguese side of the boundary road, and the need for extra land for villagers living on the British side was urgent. The Portuguese authorities had been charging rent for the gardens, a shilling or so per small plot, which the Nyasaland men had paid after being threatened with confiscation of their crops. This prolonged struggle had tried everyone's temper and endurance, and when it was announced that it had been arranged that gardens might be hoed without payment, there was a great roar of applause. The *isinduna* gave them time to talk among themselves after this announcement, to work off pent-up feelings. The other popular item was that the Paramount would have his own agricultural show at Ncheu in the coming year. He had asked Government permission to hold it, which had been granted, and he had money in his treasury to pay the expenses. European officers would come and judge the exhibits and the best would be sent on to the all-Nyasaland show at Blantyre. This announcement was greeted with cheers, a number of questions were asked and much talk went on in the ranks.

This account of the Paramount's annual gathering illustrates several of the points made in the two texts quoted. It was the only formal occasion when the Paramount met as one body all those who bore authority in his territory under him. The kind of laws and regulations which were promulgated at these meetings were previously discussed by him with his officials and the chiefs, and their presence at his side, facing the assembly, made it clear to the people that the laws came from the Paramount and had the support of his subordinate chiefs. The freedom of discussion in the council gave anyone who had something to say the opportunity to stand up and say it. There was no sense of the business being put over quickly. The *isinduna* gave speakers time to express themselves, and allowed time to elapse for other speakers to get up. They were more lenient with the speakers at this meeting than they were with witnesses in the courts, and only once or twice in the sessions, which lasted six or seven hours, was a man addressed from the platform and told: 'Speak well that we may hear your words.'

This method of putting new laws and regulations before the people illustrated the concept of one law for all, and of one source of law-making within the territory, namely the Paramount, whom they saw before them as the centre of the group of chiefs and leaders. The procedure therefore gave strong support to the political structure, for it was only on the occasions of this assembly of all the Paramount's office-bearers that all those in authority could be seen together as an authority-wielding group, their relative importance being indicated by the order in which they sat. The procedure also gave support to the policy of political assimilation, for in that assembly of several thousand people, the great majority were not of trans-Zambesi clans, and therefore not acknowledged as Ngoni so far as tribal origin was concerned. They

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THE NGONI POLITICAL SYSTEM

were, however, and they realized it at such assemblies, the people of the Paramount, and he was to them the visible symbol of their unity in one kingdom.

THE COURT SYSTEM OF THE NGONI

692 The enforcement of the laws as announced and discussed at these assemblies was the business of the courts, where the laws themselves were interpreted and often elaborated on occasions of an open breach.

The relationships of the courts in the kingdom followed the hierarchical pattern of the political organization. All minor cases were heard and, whenever possible, settled at the village level. If the plaintiff failed to get satisfaction, or if the village headman was unable to get his judgement accepted, he had to go with the litigants to the chief's court, and if he failed there, the case could be taken to the appeal court of the Paramount. There were certain cases, such as murder and witchcraft, which in pre-European days could only be dealt with in the Paramount's court.

Some confusion arose over the use of one term 'court' for every type of institution which exercised judicial functions. The Nyanja term used in central Ngoniland for the courts at the lowest level was *bwalo*, literally the open space in front of the *indhakulu* in any Ngoni village. Nothing could be apparently more informal than the discussion among a group of senior men called together by the headman, on a verandah or under a big tree, in order to settle quarrels and hear complaints. No formal records were kept, there was no clerk, and there was no summing up or pronouncement of judgement. There was, if the meeting was successful, general agreement about the action necessary and about who ought to initiate action. Above the level of this village headman's court were the courts of the *ahumusana* held at their head villages, and above them again the chiefs' courts. After 1933 the courts of the *ahumusana* gave place to the courts at the head villages of the chiefs. The proceedings there were more formal and included presenting evidence, defending the case and pronouncing judgement on cases rather than, as in the villages, talking things over and appealing to certain principles to re-establish equilibrium and resolve disputes.

692 The Ngoni nevertheless always recognised these courts at the village level as an integral part of their system. It was the mark of a good headman that he should be able to settle the minor cases in his village without constant reference to higher authority. The majority of villages under 563 Ngoni rule were villages of local tribes who had surrendered to, or been conquered by, the Ngoni. The headmen were therefore of the local tribe, as a rule surrounded by their kinsmen, and their position carried with it the necessity of relating local tribal custom, especially in matters involving marriage and family affairs, to the legal principles and procedures of the Ngoni courts. Many cases came before the courts in

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central Ngoniland in which Ngoni law and usage differed from local usage in such matters as the custody of children, the right to 'leave the village' and the ownership of cattle. 692 ●

Above the informal courts of the village headmen were the courts held in pre-European days at the head villages of the *alumuzana*. A *mulumuzana* was called 'the owner' of those villages surrounding his head village, consisting of his own clan members, local people and captives. The *mulumuzana* had a double interest in maintaining justice in his area. If he failed in a case, there was in the central kingdom only one court above him—that of the Paramount—though in the northern kingdom the areas ruled by the leading Jere chiefs had courts which came between the *alumuzana* and the Paramount. Except in cases of murder and witchcraft, which he was obliged to take to the Paramount's court, the *mulumuzana* was anxious to prove to the Paramount that he was a man fit to hold and wield authority over a number of villages. He was also concerned to maintain his authority among his own people, and this was recognized most clearly in the conduct of cases in his court. The system of checks and balances in the Ngoni political organization required that the Paramount should always dominate, but at the same time delegate authority to his chiefs and the heads of leading clans. The authority exercised by a *mulumuzana* derived from his leadership of a Swazi or trans-Zambesi clan in a particular area, but he had to maintain his position in pre-European days by constant vigilance over his people. In the process of holding together villages of mixed tribal origin the courts of the *alumuzana* and the administration of law in them played an important integrating role.

The conduct of cases in Ngoni courts

Informants in the northern and central kingdoms made it clear that there were certain common elements in Ngoni procedure in pre-European days which were carried on in the courts in the 1930's. The one who brought the case to court, the plaintiff, was called the owner of the case (*mwini wa mlandu*). Those who were called as witnesses were those who were present at the time of the quarrel who might have seen or heard something which bore on the case. The Ngoni practice of legal procedure was not to call witnesses to support either side, but to appeal to the public to give evidence about what had occurred. I heard Ngoni counsellors press a witness to say exactly where he or she was at the time of an assault. On other occasions they addressed a witness in these terms: 'Now you are from X's family. Here in this court you must tell us truly what happened. Do not be afraid. Do not remember your kinship (*abale*) but remember what you saw, and speak well.' There was explicit in this approach a definite appeal to the public to take their part in seeing that justice was done and so restoring equilibrium and good feeling in the village. If the counsellors who were conducting a case 695

695 suspected a witness of lying, they accused him of doing so after he had told his story. If he persisted in his version of the events, and they still thought he was lying, they cross-questioned him, and when the point where he contradicted himself was reached they turned on him and said: 'You lied. Now you have said you lied. You do not speak well.'

671 In the following account of Ngoni law by Cibambo there are two
695 main emphasises. One is on the existence of law, in the sense of a norm of good conduct, conformity to which was expected and enforced. The text at the beginning of this chapter showed how the law was made known to all the inhabitants of the country, so that ignorance could not be pleaded as an excuse for law-breaking. The other emphasis is on decorum and the regular and accepted pattern of behaviour expected in the courts, and on the Ngoni hatred of bribery, which was claimed by them, and on the whole endorsed by Europeans.¹ Respect for the law, for the court in session and for the judgement, are expressed in Cibambo's account of the proceedings, and the winner of the case (though formerly it was the loser) expressed his thanks, after judgement was given, to the Paramount or the chief, and to the elders.

671 ¶ The laws and the power to punish disturbers of the peace were in the
692 power of the Paramount and those who were under him. If there was a bad case in which the guilty man deserved death according to the law, such a matter was in the power of the Paramount and the lesser chiefs who helped him, and of them only. It was the same in the case of anyone who deserved to be despoiled of all his possessions because of his wrong-doing. The law was a protection for the people who might have been killed causelessly by their masters if they had had the power. People who were in danger from those who were above them, in danger of confiscation or of death, ran to the younger brothers of the Paramount or to the Paramount himself or sometimes they ran to the great *isinduna*. Praises had been added to those of Chief Mtwalo for this very reason that he had saved many whom Mbelwa had wanted to kill '*Isifuba eninamazwi, isisho nkhutetela abahumazana*' (a chest with words which spoke for the men of noble birth).

692 If people quarrelled in a village and could not be reconciled it was the work, as it is today, of the headman to try and bring them together, and if he thought that one had wronged the other he ordered him to bring something to recompense the other. Such recompenses were small things, from beads to a goat, perhaps an axe or a hoe. If the headman found he could not settle the business he went with them himself to the next court, to the head of the group of villages, and the standard of the payment increased. Serious cases went to the courts of the chiefs but these cases were few and not like today. People were very much afraid of each other

¹ On the walls of Paramount Mthwalo's court in Maimba district in north Nyasaland were painted three sayings in English and in Tumbuka. Over the Paramount's chair was written 'Justice is blind'; by the place where the witnesses stood to speak, 'The law has no respect of a person'; and over where the general public sat 'Everyone is equal before the law'.

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and appeals were uncommon. Chiefs did not allow a man to come by himself with his case to them, he had to come with his headman. Even those in danger of death went first to the headmen and these brought them to the chiefs.

The Ngoni hated bribes. If any *induna* was found to have taken bribes from people he was condemned and punished.

The hearing of the cases was like what it is today. The one who brought the case to the court spoke first, then the one with whom he was quarrelling. If there were elders there from their village they also spoke telling out how these people quarrelled, saying so-and-so began to quarrel in such-and-such a way, and then showed how they had been unable to judge it in the village. They did not go into details of the quarrel, that was done by the men themselves. After those who had quarrelled had told of the beginning of the case any who knew of it were asked to say how it appeared to them in the village. These were the witnesses both for and against.

When this had been done, all who were implicated or interested in the case remained silent. It is the custom of the Ngoni that all who spoke in a case should stand and have a stick, and as they spoke they should walk about and limp with the stick or sometimes stand all together, but in that case the hand which held the stick should shake and stick it into the ground. Only women spoke seated. No one at the hearing of a case was allowed to lie down, everyone, even the Paramount, sat. They did this because they were afraid that otherwise the case would not finish quickly. The court was held in the cattle kraal. Women were not allowed into the kraal for cases, but sat outside opposite where the old men were gathered, even though they were the wives of the Paramount.

After the litigants and the witnesses had spoken it was the turn of the elders of the court. They questioned and agreed with or criticized the men who had quarrelled but they did not pronounce judgement. They waited for the Paramount who first of all sat silent and noticed those who unravelled or twisted the case. Afterwards when the people had finished speaking, the elders delivered the story to the Paramount or judge. The judge then delivered his judgement and condemned those who had twisted the case. He delivered his judgement sitting not standing like the other people and when he had finished all thanked him, or rather saluted him with a loud 'Bayets' or with the surname if to lesser chiefs. Sometimes he sent an elder to tell the court the judgement. When the case had been judged no one criticized the judgement. The one who began to give thanks for the judgement was the one who was found guilty: this he did to show submission and repentance. The custom of today that the one who wins the case gives the thanks is not good because the man who has lost goes away in resentment and threatening and often the case crops up again.

If an *induna* or man of standing went secretly to the Paramount to accuse somebody that he deserved death (perhaps for witchcraft), very often the Paramount sent a man in secret to warn the condemned man to run to a chief's village and hide his head. In this way many left their fathers and went to build with the chiefs and when they went they took all their things.

178 sons of his father and of his father's brothers. These *amakhosana* were
 622 honoured next to the Paramount. The *alumuzana* were for justice in the
 631 courts, and for being the 'ears of the Paramount' in all the country. The
 645 change was made by Mputa because he saw that if the *amakhosana* were
 given power they claimed to be big chiefs themselves. Therefore he chose
 for the courts and for the leaders in war and for lesser chiefs the *alumuzana*
 and *izinduna* who were clever and whom they could trust.

184 The diagram on p. 99 relates to the period between 1933 and 1939
 622 and sets out first the officials in the territorial divisions of the Ngoni
 631 kingdoms from the Paramount to the headman of a village. In the
 645 northern kingdom only the Paramount and the six chiefs had recognized
 ● [692] courts, the chiefs' courts operating for their districts and the Para-
 mount's court for the whole kingdom. There were two sets of office-
 bearers who had no courts but who exercised authority over groups of
 villages. One group consisted of members of the Jere clan who were
 not recognized chiefs but were *amakhosana*, literally 'children of the chief'
 but used as a rule for all members of the royal clan. Only certain
amakhosana had villages under them. The other group consisted of the
 heads of Swazi and trans-Zambezi clans who owned several villages and
 sometimes had authority over a large area. Cibambo put this group
 below that of the chiefs, and other informants confirmed this as the pre-
 European pattern. But the informants also said that many of the power-
 ful *alumuzana* formerly had their own courts and did not have to bring
 their cases to the chiefs' courts as they did in the 1930's. At the bottom
 of the territorial hierarchy came the headmen of single villages. In some
 cases the village headman had formerly been an *induna* in a large village
 which had broken up. Some were of the royal clan or of Swazi clans.
 The majority belonged to the local tribes and were owners of villages
 which were for the most part villages of one kinship group.

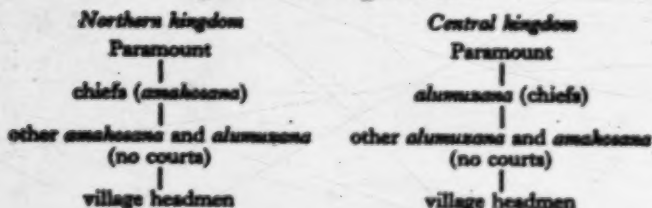
The text about the hierarchy in the central kingdom shows that a
 deliberate change had been made in the traditional pattern to avoid a
 struggle between the Paramount and his brothers when they had recog-
 nized positions as chiefs. The *alumuzana* who appear in the diagram as
 chiefs were the six who were recognized in 1933 as Subordinate Native
 Authorities. There were other *alumuzana* who were not so recognized,
 and certain members of the royal clan, all of whom owned a number of
 villages but had to take their cases to the recognized courts. The divi-
 sion caused by setting up the Portuguese boundary in the 1890's left
 many of the leaders of the Maseko clan on the Portuguese side, with the
 result that the number of *amakhosana* owning villages and taking any
 prominent part in the life of the kingdom was very small; and another
 large group of the Maseko clan were in Dedza district under Chief
 Kacindamoto. The majority of village headmen in the central kingdom
 were of local tribes, and their villages were as a rule much larger than
 those in the northern kingdom.

COURTS AND OFFICIALS

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Ngoni territorial office-bearers.

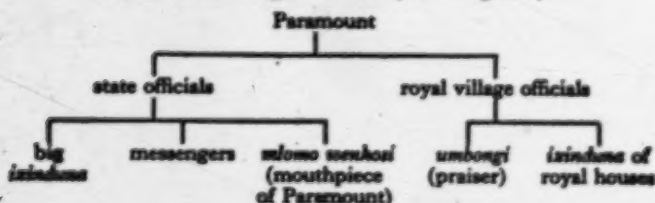
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Ngoni national office-bearers (both kingdoms)

In the description of the annual gathering in the central kingdom to discuss new regulations, reference was made to those on 'the platform' at one end of the great square. There the Paramount sat with his state officials, the big *izinduna*, the messengers, and his spokesman or mouthpiece. These have been called state officials in the diagram to distinguish them from the officials of the royal village. It is a distinction which is one of convenience rather than of importance. The Paramount's spokesman lived in the royal village, and the praiser often did not. But the spokesman appeared with the Paramount on all occasions in every part of his kingdom when he went visiting, whereas the official praiser only recited the praise-songs at ceremonies in the royal village.

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The big *izinduna*, as Cibambo points out in his text, were very close to the Paramount, advising him on matters of state, and speaking to the cases in his court. The *izinduna* of the big house and of other houses in the royal village were not concerned with matters of state, but with day-to-day affairs in the village. Illustrations of their work will be given in the next chapter. The work of the messengers, described by Cibambo, was that of keeping close touch between the royal village and the chiefs. He describes also how each territorial office-bearer had his messengers to send out to the heads of the next group below his. By this use of messengers for intercommunication between officials, the *alumuzana* and *amakosana* who had no courts received messengers from the chief above them and sent out their own messengers to the villages which they owned.

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The only group mentioned by Cibambo which is not included in the

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THE NGONI POLITICAL SYSTEM

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diagram is that of the *madoda*, the older men who wore the head-ring. Probably in pre-European days they received more recognition than was apparent in the 1930's after the head-ring had been given up. The *madoda* will be referred to in the next chapter on the royal village and in Chapter V of Part III on age sets. In the appeal court of the Paramount and in the chief's court there was always a group of these senior men sitting behind the *izinduna*, to whom the *induna* speaking to the case sometimes turned for advice and consultation.

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Reference was made to an overlap between territorial office-bearers and national office-bearers. The big *izinduna*, the spokesman of the Paramount, and sometimes the messengers, were members of Swazi and trans-Zambesi clans, and often were *alumuzana* who had no courts. This was a method by which in the 1930's those *alumuzana* could be drawn into the circle of officials and receive a small salary for their services.

This set of office-bearers which we have considered in relation to the Paramount, with the exception of his spokesman and his praiser, was duplicated for the chiefs in both kingdoms, whether they were of the royal clan or *alumuzana*. The account of the royal village in the central kingdom which follows in the next chapter will illustrate how these officials functioned in the day-to-day affairs of the Paramount's headquarters.

CHAPTER V

A ROYAL VILLAGE AFTER 1933

The Paramount and his village

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For some weeks in 1935 and in 1936 I lived in the Paramount's village of Maganga in the central kingdom. The central kingdom included all Ncheu district, consisting of 1,092 square miles, a total population of 88,446, and a density of 80.99 per square mile. The village was 300 yards off the main road running from north to south of Nyasaland, and was approached by a hoed motor road flanked by huts. It consisted of three main sections: the Paramount's large brick residence and the surrounding buildings within a palisade or reed fence, including the huts of his daughter and son-in-law, and of his brother-in-law and sister; the huts and kraal in the section of the *induna* of his big house, Kalilombe Mbewe; and the huts and kraal of the original village 'owned' by the headman, Lazaro Dzonzi. On the south of the village was the large open space where the weekly market was held, and where several Indian stores faced the main road. On the north was the dispensary building,

CHILDREN OF THEIR FATHERS

353 women's. For all ceremonies the men sat on the right side,
 592 and the women on the left, the place of honour for the
 [562] leading man and woman being by the main door-posts. No
 young man or woman ever thought of sitting near them.
 The other place of significance lay between the fire and the
 back of the hut on the right-hand side; it was known as the
 [778] 'place of the spirits', the 'ancestors' corner', where the
 [769] baskets and spears and other ritual objects were kept which
 were used in the ancestral cult. Only the owner of the hut or
 those taking part in the ritual could approach this corner.

In this land, into the cultural pattern of Ngoni village
 and household life, the Ngoni children were born. In such
 villages and homes they passed their earlier years, and grew
 from boys and girls to young adults.

The Ngoni kingdoms

642 When the Ngoni made parts of Nyasaland their homeland
 they set up conquest states on the pattern which they had
 been familiar with in southern Africa. Where they settled,
 [721] they either conquered the local peoples who lived in that
 [648] area, or accepted their submission. Until the British ad-
 ministration was established the Ngoni carried on wars and
 raids against neighbouring peoples to enlarge the boundaries
 of their kingdoms. As a conquest state, similar to that of the
 [162] Ndebele in Southern Rhodesia, the population of the Ngoni
 kingdoms was of mixed origin, some whose ancestors came
 from Natal, some from the territories passed through on
 their northward march, and some from Nyasaland itself.

The kingdoms were organized on a centralized pattern
 [643] with the Paramount Chief as supreme ruler and subordinate
 chiefs under him. The Ngoni code of law operated in the
 [671] courts of the chiefs, and, as they proudly said, 'there was
 [692] one law for all people'. Military service was required from
 [702] all young men, and each territorial chief had to bring his
 [681] quota of warriors to the Paramount's village when a war
 summons went out. Military service, obedience to the law,

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CHILDREN OF THEIR FATHERS

- 173 parallel of the Jews of the Old Testament preparing the way
 177 for the Christian era to illustrate and drive home their belief
 797 that they, the Ngoni, had prepared the way for the Christian
 Gospel in Nyasaland. 'Were we not also a people who hated
 idols and images? We too tried to reach the Great God
 through our ancestor spirits, but we failed, until the mission
 came to teach us.' 'We held together the people of this land
 under one rule so that the missionaries could travel safely and
 spread the Gospel teaching.' These beliefs were stated so
 often that they became almost standard formula, and the
 incongruity of this picture with some of the warlike situations
 recorded by the earliest missionaries was ignored and forgot-
 ten. In the churches, where the people sat on mats, Sunday
 by Sunday, facing their Ngoni ministers, rising to sing, in
 [533] their typical Ngoni harmonies, Christian hymns set to former
 Ngoni war tunes—in this setting Ngoni history was brought
 home, interwoven with the new teaching, to young adults
 who formed the majority of the congregation. For Ngoni
 elders it was something more than a reminder of their past.
 It was setting the Ngoni people in a special relationship to
 [186] the European missionaries and the new learning, compen-
 sating for the passing of military power and political supre-
 macy by establishing Ngoni cultural superiority over their
 neighbours. This gave some spiritual reassurance to a people
 in the throes of political change, and it was a lesson which
 lost none of its significance for the young adults who heard it.

Ngoni law

- 671 'There was one law for all the people. No one could be igno-
 rant of the law.' These were the words, quoted in Chapter I,
 [182] which the Ngoni used frequently to describe the importance
 of law in their culture, its role in the political unification of
 their own and subject peoples, and the responsibility, laid on
 all adults, for knowledge of the law and conformity with its
 demands. An incident in a court of law, which was unfor-
 gettable to an anthropologist, was a case in which a chief sat

THE THRESHOLD OF ADULthood (II)

in judgement on his own son, a young man of twenty-one, 692
 for committing adultery with the wife of a man of a former
 slave family. The husband brought the case against the [684]
 chief's son, and the chief ordered the man to speak truly and [694]
 not be afraid. The case was heard amid the most deathly [695]
 silence. In awarding a heavy penalty of compensation against
 his son, the chief spoke of the central position of law in Ngoni
 life, and of the fact, so sharply brought out by the case, that
 the law was no respecter of persons.

Young adults, boys and girls, were held personally re- 672
 sponsible for breaches of the law which they had committed.
 Penalties were awarded against them as individuals, even
 though they often could not pay the compensation without
 the help of their father and his family. They were expected 867
 to become acquainted with the law in various ways. One
 was by conformity to accepted social codes of behaviour, in-
 stilled into them by their elders, particularly in such matters
 as sex relations, respect for property, avoidance of slander
 and of injury by violence. Another way of learning how the
 law operated, as well as the principles upon which the case-
 law was built, was by attending the courts, and listening [695]
 carefully to the cross-examinations as well as to the judge-
 ments. Young people were expected also to ask their fathers,
 and elders generally, about points of law which they had not
 understood, or had confused with some of the practices of the
 local people. The onus was upon young adults for acquiring
 this knowledge of the law as well as for behaving in accord-
 ance with it. We shall see in the next chapter how the Ngoni [577]
 regarded being law-abiding as one of their basic cultural
 traits, as well as being evidence of the individual character
 of a young adult.

Ngoni traditional skills

We made a distinction, albeit a rather tentative one, at the 128
 beginning of this chapter between certain kinds of tradi-
 tional knowledge which we have been describing up to this

797 courts themselves have been influenced by the introduction of
694 Christian rites, and in matters of divorce have been subject to
[586] pressure from the missions.

The Native

4. *The punishment of adultery*

648 The Administration prevented Ngoni from killing adulterers.
689 Instead they changed adultery into a private delict, without speci-
692 fying what damages could be awarded. Indeed the whole position
of indigenous tribunals was equivocal until 1929, when the Native
Courts Ordinance was passed. Until then no specific courts were
recognized other than those presided over by White officers of the
Administration. At the same time the Administration expected
chiefs and others to maintain law and order and formally listed their
duties in these terms. The chiefs had therefore to extemporize
and administer traditional law as best they could. Since 1929
Native Courts have been recognized and the Administration has in
the main supported the decisions reached in these courts. The law
as administered now is certainly not the same as it was before 1898
and the differences are not merely the substitution of 'civilized'
penalties for those 'repugnant to natural justice and morality'.
Nor is the law identical with English or Roman-Dutch law. The
law of adultery and divorce is adapted to a situation in which
[593] bridewealth is rarely paid, wives are left deserted for years by their
husbands, and the custody of children is uncertain and dependent
on the agreement of the children themselves.

5. *Labour migration*

167 Labour migration began in 1898 and since then there has been
593 a continual flow of men and women seeking work in the mining
464 towns of Southern Rhodesia and on the railway line of Northern
Rhodesia. The constant absence of men away at work leaving their
wives behind has made for a preponderance of women over men in
the rural area and has led to more adultery and to the emergence of
pleas for divorce on ground of desertion. The increasing number
of wives who accompany or follow their husbands had enlarged the
social field within which the marriage relationship operates so that a
quarrel between a man and his wife in town may be referred for
resolution to kinsmen many hundreds of miles away in the village.
Men marry fresh wives in the towns and bring them home years later
with many children. Two people living in villages may trace their
relationship to each other through some half-forgotten migrant in
the towns.

581 In 'the time of peace' marriage was a process by which an
591 established social structure was maintained and developed. That
structure has gone and Ngoni now live in a world of larger scale
and greater social mobility. Marriage has become something by
which local stability of relationship is maintained despite the fluidity
of society as a whole. A man moves from village to village, from

unless he has paid bridewealth, the children will go to her relatives, whatever the cause of the divorce and whichever party is at fault. He can then offer bridewealth to secure custody of the children at the same time as he loses the services of his wife. 583 586

Bridewealth to-day is almost entirely concerned with the custody of children of the marriage and does not affect the rights of a man in his wife. These rights are determined by a payment which probably did not exist in the old marriage system and which we may call the legalization payment.¹⁷ This payment is now the most important in marriage and is the only one recorded on the printed marriage certificates issued by the Administration through the Native Authorities. The Ngoni believe that the word has been taken from the Cewa, although the Cewa use the word differently. A law was made in about 1944 by the Ngoni chiefs fixing the amount of the legalization payment at a minimum of thirty shillings. Prior to this edict smaller amounts were more usual. The way in which the magnitude of the payment has varied through time can be seen from Table VII. Some people do not follow the law and pay less than thirty shillings; the majority pay the legal amount, in some areas thirty-five shillings is more usual, and recently a few fathers have successfully demanded much higher sums, up to £10, for their daughters. The edict implied that at least thirty shillings should be offered in every marriage, but marriages have been and still are being contracted without any legalization payment, as can be seen from Table VIII. However, from this table it appears that in the last twelve years legalization payments have been offered in a greater proportion of marriages than previously. 583 586 (671)

The most important right established by this payment is that to damages in the event of adultery. If a man has made the legalization payment he is sure that when his wife commits adultery the court will order both the woman and her lover to pay him damages. Adultery suits are the commonest heard in court and the legalization payment clearly establishes the fact that the man and woman are married in the eyes of the law. If the first payment a man makes is bridewealth, the legalization payment falls away, and he gains the exclusive right of sexual access to his wife without any further payment. In this respect we can see a carry-over from the old system in which bridewealth followed after 'snuff-box', and adultery was punishable by death. Usually if bridewealth is paid in a subsisting marriage, it comes after the legalization payment and is additional to it. The one payment relates to the custody of the children, the other to the sexual services of the woman. We have noted that bridewealth can be offered on the occasion of divorce when perhaps no legalization payment has ever been made. 583 586 (692)

¹⁷ Cimalo. Cf. Young, *Notes on the customs and folk-lore of the Tumbuka-Kamanga people*, p. 61; Coxhead, *The Native tribes of North-Eastern Rhodesia; their laws and customs* (Occasional Papers No. Five, Royal Anthropological Institute), p. 25; Barnes, op. cit. p. 227

sorrow, it is not necessarily always so, for loud wailing and tears are appropriate at the death of all neighbours and kinsfolk, whether friends or enemies. Men do not usually seek the companionship of their wives at dances and beer parties, although there are some men who do. In our own society we think of a man earning his living in company with other men, but spending his leisure with his wife. By contrast Ngoni men work in the gardens with their wives but seek other company for recreation. 593
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7. Divorce

The relationship between husband and wife can be terminated by death or by divorce. If one spouse dies, then his or her interest in the marriage is guarded by the surviving kinsfolk, and we shall deal with their actions in our next chapter as part of the intervention of affines in a marriage. In divorce, however, except in cases of desertion, both husband and wife are themselves involved and it is primarily by their own actions, rather than by the actions of their kinsmen, that the marriage is terminated. 586

While a marriage is established without reference to the Ngoni state organization, except in so far as the issue of a marriage certificate is concerned, divorce more frequently involves resort to the Native courts. It is possible to effect divorce without taking the matter to the court, and in the past, before the growth of the Native Authority bureaucracy had begun, many people were divorced in the village. Kinsfolk of the two parties meet together in the village of one or other party, discuss the marriage, and agree among themselves that the couple are to be divorced. The formal act of divorce is made by the couple shaking hands with each other, while those present tell them to stop hating each other. The woman is told 'If this man comes as a traveller to your house, and asks for water, do not refuse him'. [692]

It is more usual for a divorce to be referred to the court. Attempts are made by the kinsfolk to resolve the quarrel, if quarrel there is, and when the attempts fail, the group seeking the divorce or hoping to get damages from the other side take the matter to the county Native Court. It is open to either the man or the woman to take the initiative in this matter. The court hears the case, awards damages as appropriate, and, if it thinks fit, declares the couple divorced. The formal act of shaking hands is sometimes performed in court, but is often dispensed with. [694]

Divorce takes place in the village only when there is substantial agreement on both sides that it would be a mistake to allow the marriage to continue. The meeting of kinsfolk in the village may reach agreement about the return of the legalization payment or even the award of damages, but it is only the court that has power to enforce decisions of this kind, and it is to the court that disputants turn when they cannot agree. When a man wishes to divorce his wife on the ground of her adultery he usually does so through the 586
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586 court. Women whose husbands have threatened them with divorce
592 often bring the matter to court so that the divorce may be ratified
and their grievance brought to light, or in the hope that they may be
awarded damages for cruelty. If a woman does not wish to be
divorced she may hope that the court will persuade her husband to
take her back. In some areas where the Native Court is powerful,
divorces are referred to it even after they have been agreed to in
the village. The Dutch Reformed Church Mission sometimes allows
divorce, but its members first seek divorce in the Native courts
and then, when the divorce has been granted, apply to the Mission
[99] for divorce in the eyes of the Church.

586 After a quarrel between a man and his wife he may give her a
present of sixpence or a shilling and tell her that she is divorced
and must go home. This act does not of itself constitute a certain
divorce unless the man takes no steps to persuade her to return after
she has stayed at her own village for a month or more. If the man
does not go to her kinsfolk to apologize and ask them to intercede
with the woman on his behalf, then it is plain that he meant what
he said, and the woman may feel free to seek a new husband. A
woman divorced in this way is not, however, so sure of her position
as if she had been divorced in court or by agreement at a meeting of
kinsfolk and there is always the possibility that her old husband
may bring a suit of adultery against her and the new husband. The
gift and the husband's statement 'I divorce you' constitute really
only a threat of divorce, and a woman who returns to her own people
after such a threat and who is not followed by an apologetic husband
will, if she is sensible, take steps to clarify her status. Her kinsfolk
may go to her husband's kin and discuss the quarrel with them and
attempt a reconciliation or they refer the matter to the court.

A man does not need any specific grounds for divorcing his wife
and if the marriage has lasted only a short time he may just say that
he does not like her or does not want her as a wife. If no marriage
payments have been made a man may merely say he is tired of his
wife and send her home. The more common reasons given when
divorce occurs soon after marriage are that a wife is always quarrel-
ling, is lazy about preparing food, is disrespectful, or is always running
off to her own village. Where the marriage has lasted longer, the
most common grounds for divorce are adultery by the wife and
desertion by the husband.

A woman usually seeks divorce on the grounds of cruelty or
desertion. It is not sufficient for her to claim that her husband is a
leper, or is mad, or has syphilis, for the court will argue that she
ought to seek out the proper medicine to cure her husband. If her
husband has been sent to prison, the court will argue that he went
against his will and that his wife must wait for him to come out.
She is more likely to get a divorce if she can prove that he is
continually beating her or that he does not clothe her although he

has the money to do so. Sometimes a wife brings her husband to court seeking damages from him for cruelty without asking for a divorce. 586

The woman who pleads for divorce on the ground of desertion is usually the wife of a labour migrant. Her struggle is not with her husband himself but with her affines, his kinsfolk who try to protect his interests for him while he is away. We shall consider this type of situation in the next chapter, where we deal with the relationship between a woman and her husband's kin. Here it will suffice to say that provided the man has been away for about four years without writing the divorce is usually granted.

Actions for adultery are always liable to turn into divorce cases, and the amount of damages awarded depends on whether or not a divorce is granted. If adultery is proved, and it is easier to prove than to disprove it, the woman and her lover each pay 30s. to the husband and 5s. fine to the court. If the woman is divorced on the ground of the adultery, the damages are increased to £3 each to the husband and 10s. each to the court. In court the woman is usually asked 'Which man do you love?' and if she selects her lover, the divorce is granted. Sometimes the husband protests that he wants his wife back, but if the court is persuaded that to send the woman back would only lead to more trouble, they will divorce the woman despite the protests of the husband. 684 586

When divorce is granted the legalization payment, if it has been made, should be returned. The court does not, however, make any definite order on this point unless called upon to do so by the man or his relatives, and it seems that in the absence of definite instructions to hand over the money, it is retained by the woman's relatives. This is particularly true when the divorce is on the ground of the man's desertion when it is likely that his interests will be poorly represented by his relatives. 586 583

If the husband has brought his wife to court in order to divorce her on some ground other than adultery, the court may merely tell the couple that they are divorced, without awarding damages to either party. But the law on this point appears to be changing, and the rule followed in one court is not always followed in another. Even in the same court the decisions given at one time may conflict with those given at another. If the court decides that the woman is at fault she may be ordered to pay £3 damages to her husband. If the man is at fault then, more rarely, the man is ordered to pay £3 damages to his wife. Occasionally, although the fault is held to lie with the man, the woman is ordered to pay £3 damages to secure her divorce. The factors influencing these decisions appear to be the readiness of any particular court to listen to the pleas of a woman, and its opinion of the character of the woman. A woman who is regarded as foolish, or given to quarrelling over nothing, or promiscuous, is sometimes ordered to pay damages to her husband. 586 692 562

586 although the evidence presented during the hearing of the case has established the husband's fault as the ground for divorce.

586 Only if there is dispute over the matter will the court make an order about the division of crops. The principles of division are that the crops belong to those who worked hard to grow them and that the children of the marriage have to be fed by the parent with whom they live, whoever may eventually have their custody. Thus in a case in which a woman successfully pleaded for divorce because of her husband's cruelty, the court awarded all the crops in the couple's garden to the husband, as the woman had been lazy and had done only a little towards their cultivation.

[583] Bridewealth is not automatically returned on divorce and as we have seen, divorce is the time for paying bridewealth rather than for retrieving it. The disposal of the children of a divorced couple is regarded as a separate issue and to be treated on its own merits.

[128] It is useful to have some quantitative estimate of divorce frequency, but the construction of a satisfactory measure is not easy. One aspect of the occurrence of divorce is presented in Tables IX and X, where the number of divorces experienced by wedded men and women of different ages is set out.

It will be seen that, considering only those wedded men and women whose divorces are known, the mean number of divorces per head of wedded population is 0.49 (51/104) for men and 0.30 (62/210) for women. This difference may be due in part to a greater reluctance on the part of women to admit to divorce, but is also due to the greater mobility of men. While women stay at home, their husbands go off to marry in the towns, divorcing their urban wives when they return home or when the strange rural environment proves intolerable to the women from the towns.

581 By considering the number of years that marriages have lasted, it is possible to say what is the mean duration of marriage. The necessary information was available for 403 marriages extant as well as completed, experienced by men and women who were resident in the sample villages. The mean duration of all these marriages is 15.6 years, and the mean duration of the marriages that ended in divorce is 6.6 years. The median duration of all marriages is, to the nearest year, 8 years, and of marriages ended in divorce, 5 years. More divorces occurred in the period from four-and-a-half years to five-and-a-half years after marriage than in any other similar one-year period.²⁵

128 For comparison with other societies, we can express as a ratio the relationship between the number of marriages that ended in divorce and the number that did not or have not yet done so. This can be done in three ways, as set out in Table XI.

²⁵ There is no space here to give the method by which these calculations were made, but see my 'Measures of divorce frequency in simple Societies' *Journal of the Royal Anthropological Institute*, LXXIX (1949) (pp. 37-62).

MARRIAGE IN A CHANGING SOCIETY Beyond the 59
Village The Native Courts deal to a great extent with 692
matrimonial matters, and are responsible for issuing marriage 581
certificates. The Administration is concerned to see that marriage
stability is maintained, that women are not denied justice in marriage
disputes, and that adultery and prostitution do not flourish. The 797
missions are interested in the maintenance of monogamy and the
development of Christian marriage.

An unmarried individual is under the tutelage of the person who 858
rears him. It is true that sometimes people say that children are 593
responsible for their own actions before the court, and that truant
schoolboys can be made to pay their fines themselves, but in practice
it would be a harsh parent who denied help to his son in such a
predicament. He has a legal right to refuse to accept responsibility
for his child's actions, and public opinion would support a parent who
washed his hands of a recalcitrant son who had given much trouble
to his father for many years. A parent should however be very
patient with his children, hoping that in the end after he has borne
with their escapades they will become mature and wise. Where the
child is in charge of another relative, such as a parent's sibling or a
grandparent, the same attitude of adult towards child is expected.
Some children live peaceably with their parents, and accept their
direction in important affairs, while others move off of their own
accord to more congenial kinsfolk or to earn their livelihood as best
they can as juvenile labourers on the tobacco farms.

In relation to marriage this variable pattern of dependence and 593
independence shows itself characteristically. Girls are on the whole 584
more dependent on their parents than boys, yet some girls become
economically independent and seek their own husbands a few years
after puberty, while some men in their late twenties ask their parents
to find wives for them. Between these two extremes the majority
of the young population seek their own sexual partners but turn to
their parents for assistance in arranging the marriage.

An unmarried girl depends on her kinsfolk for shelter and food, 882
and it is they who take action on her behalf to protect her interests
and to defend their own rights in her. If she is seduced and becomes
pregnant her kinswomen find out from her the name of her lover. 848
It is said that a girl will sometimes suggest the name of a lad whom 684
she dislikes rather than reveal her true lover. Other people say
that a girl will indicate the name of the man she wants to marry,
whether or not he is the genitor of her child, in the hope that he will
then marry her to avoid trouble. The girl's father, if he is available,
takes the matter to court if he cannot get satisfaction from the
alleged genitor, and it is to the father that the lover pays a beast¹
if he is found guilty. The child belongs to the girl's kin. The
girl's parents may try to persuade the lover to marry their daughter
if they think he will make her a good husband, but if he does not find
favour in their eyes they remain hostile to him. We shall see later

¹ Called *cidumu*.

MARRIAGE IN A CHANGING SOCIETY

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a faithful woman whose husband stays away many years does not bear children, but they do not condone infidelity. The prolonged absence of men which leads to this unsatisfactory situation is seen as part of the disruption of the old order by the coming of the Whites. It is they who are responsible, both for the lack of children in marriages where the woman is faithful and for the occurrence of adultery in marriages where she is not. The virtue of bearing children and the virtue of fidelity are values in conflict and the Ngoni see only one solution, the ending of labour migration. This conflict appears with particular force when a man goes away leaving his wife pregnant. This action is in itself hazardous, for the man will not be there at the time of birth to confess his adultery, yet men do go away knowing their wives are pregnant. If a live child is born, it must be protected by the rite of 'taking up the child'.¹⁹ If this is neglected the child may die, and it is in the interests therefore of the man's relatives as well as the woman's that it should be performed. The only consistent line of action is to ensure that the medicines which can be used as a substitute for the rite are available to the woman. These medicines are expensive, and relatives may be reluctant to find the money for them, particularly as the whole procedure is under the ban of the missions. The only other solution is for the woman to take a lover with whom she performs the rite. If they are caught, the excuse that they were sleeping together merely for 'taking up the child' is not accepted. Here the same conflict and the same attitude are seen as when a woman has an impotent husband.²⁰ To achieve a desirable end the woman must commit adultery; but woe betide her if she is caught in the act.

There is an important difference between the way in which the kinsfolk act at the level of village discussion and their behaviour later when matters are referred to the court. In the village they are fairly free to act without reference to the absent husband. They can give advice and can attempt to enforce mutually agreed damage payments of chicken, acting in the light of their opinion of what is in their own interest and in the general interest of their kinsman. They cannot deal in this way with divorce or with large damages for adultery. These matters must be referred to the court and here much more deliberate attention is paid to the wishes of the absent man. If a case of adultery is brought by the man's kin, the court enquires about the wishes of the husband in the matter. The husband's kin must produce a letter from him authorizing them to proceed against his wife and he must say in the letter whether he wishes to divorce her or merely to claim damages for adultery. The case is usually adjourned for three to six months while this is done. A woman who pleads for divorce on the ground of her husband's desertion is similarly told to write to him informing him

¹⁹ See above, pp. 45f.

²⁰ See above, p. 34.

602 that she intends to seek divorce if he does not reply. If the address
593 of the migrant labourer is unknown to his relatives or to his wife,
684 the court endeavours to trace him through the Administration.

692 Thus the husband's kin usually try to prove in court that the
woman is seeking divorce because she has another husband in view,
and sometimes imply that she has been committing adultery with
him. I heard one man oppose the plea for divorce presented by the
wife of an absent kinsman by saying that he was sure the woman
had been committing adultery but that he had been unable to catch
her in the act. Let the court postpone the case until he had good
evidence and then he would agree to the plea. The husband's
relatives are more certain of £3 damages if they can prove adultery,
and the money is paid to them on behalf of the absent man. For her
part the woman usually denies that she has any thought of
remarriage. She arrives in court in her oldest and shabbiest clothes,
to demonstrate both her husband's failure to clothe her and her own
lack of desire to attract other men.

593 The general principle that no court action involving the husband's
684 sexual rights can be taken without his consent applies even to cases
of incest. It may be well known that a woman is living incestuously
with, say, her father, but the husband's relatives cannot take her to
court without the permission of the husband. Many husbands, on
hearing from their relatives that their wives are committing adultery
or are pregnant by other men, prefer to let the matter stand over until
their return to the village which may be several years hence. Thus
one woman may have been sleeping with her father for many years,
and another have a growing brood of adulterine children, before
at last they are brought to court by their returned husbands.

578 Even when a man and his wife are both living in the towns, their
602 relatives may be called upon to settle differences between them.
In one instance that came to my notice, a man and his wife both
from the same village were living together in Lusaka. The woman
[845] had a still-birth and her husband went to a diviner to discover who
[787] was responsible for this. He was told by the diviner that his wife
[754] had been bewitched by his father's brother's son, who was also in
Lusaka. The man wrote home to the village to complain. A
meeting was held attended by important people in the village, and
it was decided to write back and tell the two men that they must
not be so foolish as to quarrel in this way. Not all men who go
away remain in such close touch with the village but there is a great
deal of correspondence back and forth, and this is augmented by
167 the news brought by friends who come home. The intervention in
602 a marital quarrel in the towns is one aspect of the way in which the
field of social relations held in common by rural villagers stretches
out to include kinsmen and former neighbours working many
hundreds of miles away. Men who fall sick in Southern Rhodesia are
fetched and escorted home, fathers go on holiday to visit their

11. *Headmen*

The kin of the couple are not the only people in the village who are concerned in their marriage. In any matter of importance taking place in the village, attracting many onlookers and participants, there should always be someone to represent the 'owner' of the village, as the headman is also called. This is as true of marriage as of anything else. The intervention of the headman is clearly seen in such situations as the gall bladder ceremony and the entry into the wife's mother's hut. At these public affairs a lieutenant may be acting as master of ceremonies, even though he is not directly related to the couple. In most villages everyone is related in some way or other to everyone else in the village, but unless the marriage involves one of the close kin of the headman or his lieutenant, it is clear from the role he plays that he is present not because of his kinship to the couple but because he is a political official in the village. Thus at a gall bladder ceremony a lieutenant was called in to anoint the bride although he came from another division of the village. At another, a village lieutenant instructed the bride with these words: 'I am the lieutenant of the village. Fear me and I will also fear you. Work hard for [your father-in-law] Jesse.'

The headman of the village ought to be called to, or at least told about, any meeting to discuss a quarrel, and if the matter is taken to the court, he may be required to explain what steps he took to settle the quarrel in the village. His opinion on the character of the married couple is listened to. In the case of Daniel and Deborah, we have seen that at the first two meetings the headmen of the two villages were present, and although the headman of Daniel's village was not very closely related to him (he was Daniel's father's wife's father's wife's son) he took part in the discussion. At the third meeting the headman of Deborah's village was not called, but it is significant that the headman's father's father's brother's son was called in. The village was in danger of splitting at about that time, for a variety of reasons, and the headman's classificatory father was trying to form a separate village.

12. *The Court*

Beyond the ambit of the village lie the courts and the Administration. We have seen that it is to the court that married couples go when their troubles are greater than their kinsfolk can deal with. Beyond the courts there is always the possibility of appeal to the Administration, and from time to time the Administration intervenes in village affairs on its own initiative. Another external system impinging on marital affairs is that focussed on the missions. By contrast, the interests of White planters and urban employers are concentrated in fields other than marriage, and except in the case of employees of long standing, they do not concern themselves with the marital affairs of their labourers, save in so far as attention to these may conflict with a man's attendance at work. In the particular

In The particular

427 field of urban housing, however, the forms of marriage become
581 important and a man may be required to show that he is legally
married before he can rent married quarters.

692 The work of the court is, in the words of the councillor hearing the
581 pleas of Ruth (p. 54), 'not . . . to force men and women to divorce
each other, but to instruct them how to live well together'. Whereas
kinsfolk have an interest in a particular marriage, the court is
concerned with the well-being of the tribe as a whole, and the
maintenance of Ngoni values. It has a particular interest in those
aspects of marriage in which the Native Authority bureaucracy is
concerned, namely the issue of marriage certificates and the handing
over of the legalization payment. In court as yet, no inquiry is
made as to whether a marriage certificate has been issued in
respect of any particular marriage. These certificates were first
introduced only a few years ago, and if a married couple want one
they must make a visit to the court accompanied by one or two
relatives, and pay sixpence fee. They do not go to this trouble
until they need one for the journey away from Fort Jameson. This
may be after several years of married life.¹⁷ In village discussions
of marriage I never heard mention of marriage certificates, nor did
I see a litigant produce one in court. One man, obtaining a certificate
for his marriage that had taken place a year previously remarked
that in these days one could not be sure of damages for adultery
unless one had a certificate. I think he was ahead of custom in
this matter, but as the same individuals issue certificates and try
cases, it seems probable that such a development will take place.
But even with the increased importance of the issue of certificates,
it seems likely that the role of the court as primarily a conciliatory
body will continue for some time, so long as court members do not
become a body of specialists differentiated from the rest of the
population.

692 The court is reluctant to grant divorce to a woman on the ground
581 of her husband's desertion if he is a labour migrant until it can be
shown that she has made efforts to trace him and has given him a
chance of re-establishing contact with her. Therefore, women are
made to write to their husbands informing them of their intention
to proceed with a divorce. These letters are sometimes shown to
the court as evidence that they have been written. It is only after
an adjournment of several months that the court will take up the
case, and the wise woman, during this time, avoids any indication
that she has a new husband in view. It is, as it were, assumed that
there is always a suspicion of adultery, but if her husband's kin
cannot marshal any evidence against her, the court will grant her
plea. It is felt by some court members that the attention paid
to the pleas of women is forced on them by the Administration,
and they are anxious to show that they do not divorce women too

¹⁷ Cf. Richards, *op. cit.*, p. 84.

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easily. Paramount Chief Mpezeni III, in a Christmas broadcast in 1948, addressed to Ngoni workers in the towns, said

Think not that I divorce your wives merely when they come to court. I do so when I see you send no money or clothes or you stay away for more than five years, not writing or sending anything to your families. I do this when they come to see me, both she and your parents. You do no good to your families by forgetting them all when you are in a strange country.

The grounds on which divorce is granted are more or less the same in the court and the village, but although the court, like the village assembly, thinks of itself as being primarily concerned with 'teaching people to live well together', it is also, unlike the village, concerned with reinforcing the power of the Native Authority bureaucracy and upholding the authority of the chiefs. Hence the court gives greater weight to the formalities of marriage and the theoretical rights inhering in the different payments. The chiefs, councillors, assessors, clerks, and police who make up the court are all men, whereas in the village meeting old and important women give their views and they are listened to with attention. My impression is that women are less favoured in the courts than they are in the village.

The law that the legalization payment shall be not less than thirty shillings was agreed to at a meeting of chiefs and their supporters in about 1944. Informants said that the law was introduced so that women as well as men could be punished for their adultery. It was argued that in a marriage in which no bridewealth had been paid, and only a few shillings as the legalization payment, the woman's kin could not in equity be called upon to pay damages on her behalf to her husband when she committed adultery. Adultery was thought to have increased, and women were as much to blame as men. By making the legalization payment a considerable amount, equal at the time to two months wages, it became possible to punish the woman in the same way as her lover. As we have seen, not everyone keeps this law, and women are married with a smaller amount as legalization payment, or with no payment at all. It is held by some people that a marriage certificate will not be issued unless at least thirty shillings legalization payment has been handed over, but in fact it is still possible to get a certificate when some smaller sum has been paid. In the light of developments in other tribes of the Eastern Province, it seems likely that before long thirty shillings legalization payment will become necessary before a certificate can be obtained.

One copy of the certificate is given to the man and another to the woman. With the help of her certificate, and of letters from her husband showing he is calling her to join him, a woman can get a pass from the court allowing her to buy a ticket on the bus going to the railway line or to Nyasaland. These certificates have therefore considerable value, and one woman's pass may be used by another.

[45]

TRADITION AND PRESTIGE AMONG THE NGONI

MARGARET READ

I. THE NGONI PEOPLE. Before I made my first camp in an Ngoni village, many Europeans had said to me, 'There are practically no Ngoni left to-day. They are all hopelessly mixed with other tribes. None of them keep to the Ngoni customs any longer. Their chiefs are no good.' From the doorway of my hut I saw people coming all day long to the Paramount Chief, behaving towards him with profound respect, bringing him presents, working for him. His children formed a special group in the village, easily recognizable by their bearing and their manners. Old *indunas*¹ came to instruct me, as they had instructed chiefs in their day, on the duties of a ruler, and the code of Ngoni laws. Old warriors in war dress came and danced by the cattle kraal and sang praise songs. Courts were held with scrupulous regard for order and justice. Other chiefs came visiting from distant parts with their retinues, and were received ceremonially. It soon became apparent that here was the centre of a political state, whose head was invested with prestige and authority over a wide area, and where behaviour to the Paramount and to every one else was strictly regulated by custom, and as strictly observed. These were Ngoni, and they and their fellow Ngoni in other areas¹ for the next ten months introduced me to the Ngoni people. The European assertion, that they no longer existed as a people, they laughed at, and proceeded to demonstrate that the contrary was true.

The Ngoni are found to-day scattered over four East African territories. The largest groups are in Nyasaland in the districts of Mzimba, Dowa, Fort Manning, Dedza, and Ncheu. In Northern Rhodesia they are in the Fort Jameson and Lundazi districts bordering on Nyasaland. Another section is in Portuguese East Africa on the South-West border of Nyasaland. Under other names there are Ngoni settlements in Tanganyika Territory. The present divisions of the Ngoni are due partly to European frontiers, partly to the fact that more than

¹ According to the census returns there are about 80,000 Ngoni in Northern Rhodesia and nearly 250,000 in Nyasaland, with other groups in Tanganyika Territory and Portuguese East Africa.

¹ [i.e., military leaders.—Analyst]

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177 one Ngoni area to another, and it is evident that they are well aware
 184 that they met with different kinds of white contact. A frequent topic
 of discussion in villages is the differences between the administration
 of N. Rhodesia and of Nyasaland, as well as the policy and attitudes
 of the different missions.

177 There is, however, one common factor in the situation called
 186 culture contact, existing wherever the Ngoni meet any Europeans.
 Like the Zulu, the Ngoni do not necessarily take kindly to white ways
 nor desire to make an extensive imitation of white culture. Their
 racial and cultural pride makes them cling to their own institutions
 and resent the assertion of white superiority in every sphere of life.
 This is evident in material culture as well as in the realm of political
 and social values. The Ngoni are well known for their skill in house-
 building, yet they prefer their own of poles and mud, and are slow
 [342] to take to brick houses. Their houses, both in the villages and on the
 copper mines, were noticeably bare of 'store goods', and their expen-
 diture on clothes and 'trash' is low in comparison with the wages
 earned. Their standards of hospitality, of courtesy, and of mutual
 assistance they believe to be much superior to the Europeans. They
 carried on their own system of courts by themselves until it was
 • [692] recognized by the Native Courts Ordinance a few years ago, and they
 speak with scorn of the chief who cannot decide his own cases and
 has to have recourse to the Boma. Several times in the villages, when
 describing their agricultural methods, or hygiene for young men, or
 moral training of children, they have said to me, 'Write that we
 knew this before the *Azanga* came'.

186 On one count they do concede superiority to the Europeans. 'Only
 726 in war the *Azanga* knew better', and that to the Ngoni was the acid
 test. In Mpezeni's and Gomani's countries, where they were con-
 quered by force of arms, they knew they had to yield as they had made
 others yield in their day. Yet even here they find a cause for pride.
 'No one ever conquered us until the *Azanga* came, and no one will
 conquer us again until they first conquer the *Azanga*.' This I have
 had said to me many times by men when speaking of their experiences
 as carriers and as *askari* in the East African campaign. They add as
 explanation, 'We went to the war of the Germans because the Boma
 said we should go. But we wanted also to see if the English would

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work in Southern Rhodesia and the Union. This exodus to the south in its turn brought the Ngoni into touch once more with the Matabele, the Zulu, and the Swazi, and reawakened their consciousness of their southern origin. It is significant that just at the point when their power in their own country received a crushing blow, they came into contact once more in the south with the stock from which they had sprung and to whom they could still speak in their own language. The anthropologist who looks for the reason why the distinctive Ngoni culture did not die out entirely after their military defeat and the advent of the whites, can see at least part of the reason supplied by the results of this economic exodus to work in the south. When the other tribes in the neighbourhood were, in the Ngoni phrase, 'running always to the Boma' and incidentally picking up fragments of European customs, the Ngoni remained, according to their own account, to a great extent aloof and were strengthened in this aloofness by their renewed southern connexions.

Ngoni supremacy over the country was at an end. The Europeans were the overlords of all the tribes, not the Ngoni. Instead of one big chief in the country, many small ones were now recognized who dared to give themselves airs because they knew the Ngoni could not compel allegiance to their Paramount. Chewa people living under Ngoni chiefs could no longer be forced to stay there, therefore a different attitude towards them was necessary. 'Chewa' could no longer be synonymous with 'slave'. I have heard Ngoni chiefs in court address their *indunas* and headmen many times on behaving well to people of other tribes 'Or they will leave us and to-day we cannot make them return'. A recent case in which a young chief, but a very important one, was summoned to the Paramount's court for insulting a Chewa woman, was made the occasion by the Paramount for a long public discourse on the present relations between Ngoni and Chewa, pointing out that an Ngoni chief whose Chewa subjects left him would 'spoil his country' and 'all his people would be ashamed'. Ngoni prestige, in fact, having lost the support of military power, had to rely on other sanctions. In their own eyes, their prestige was still due to their southern origin, their success in creating the Ngoni state in an alien milieu, and those distinctive institutions which they had retained. To the surrounding people, to the Chewa and other tribes,

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N M 178 563 648 [692] [643] Ngoni prestige depended partly on the very effective justice meted out in the courts,¹ and also on the unquestioning allegiance of all subordinate authorities to the Paramount Chief. A Chewa Paramount Chief told me that he envied the power and prestige of the Ngoni Paramount, 'because all his chiefs obey him', and there is undoubtedly a widespread admiration among the less united local tribes for the centralized political organization of Ngoni, and the fact that they can hold a large area and many people together as an effective unit.

N 178 186 The Ngoni, therefore, in the course of the last thirty-five years have to a large extent made the adjustments necessary to their changed relations with the local peoples. They have accepted the new situation *de facto*, though they do not necessarily acquiesce in heart. They still think they are due a unique position among the tribes, and for this reason they dwell continually on the glories of *chamtendere*. Nor does the adoption of some measure of European ways reconcile them to a different attitude. Even educated Ngoni teachers and ministers have said to me with deep regret, 'We are ashamed because we are being ignored to-day by other tribes'.

N 648 [609] [186] [651] [184] Their attitude towards Europeans is also partly based on the European failure to accord them a unique position among the tribes, or at least to acknowledge their former unique position. This, to them, is a cause for feeling ashamed. They are ashamed too because the land, except in the Reserves, is no longer theirs, and they have to submit to taxation. 'To pay taxes, that is our war to-day', and something of the old martial spirit is evident in the young men who successfully evade the tax collectors, where the tax is collected directly by the Government, as in Mpezeni's country. In Gomani's country, on the other hand, where taxes are collected through the chiefs and headmen, though the men groan at having to find the money, they do not attempt to evade it, first because it would be useless, and secondly because they acknowledge the right of the chiefs to collect dues from them.

N 177 609 Any generalization about the Ngoni attitude to white people would be inaccurate without much detailed explanation, for which there is no space here. It is true though, I think, that at least in Mpezeni's country and possibly in the others, too, the Ngoni have not yet willingly made

¹ It is said that it is useless to bribe Ngoni chiefs and councillors.

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178 blame the Europeans for it; but it remains part of the distinctive cultural heritage of the tribe.

182 As we might expect, notions of this kind do not provide sanctioned standards of conduct nor ideal patterns towards which Ngoni strive. They may be used to explain or justify a state of affairs, as we have seen, but they do not directly determine action. An individual who departs from traditional custom, in these terms, is not necessarily censured. Indeed, men who are knowledgeable about the glorious past do not follow traditional ways any more than do less-well-informed people. According to tradition the Ngoni are a virilocal people, yet if a man goes to live with his wife's relatives his own kinsfolk cannot force him to return by appeal to this virilocal tradition.

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[606] Traditionally a man avoids his mother-in-law. Yet I once saw an aristocratic man, a great authority on traditional history, on leave from work sitting on a verandah chatting with his mother-in-law. I said to him, "I thought a man should avoid his mother-in-law." He laughed and replied, "Yes, so he should. This behaviour is disgusting, and as soon as I come to live here permanently I shall see that customs are properly followed."

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619 In certain situations the Fort Jameson Ngoni appear as a tribe in contrast to other tribes. The tribe is an administrative unit, with its own chiefs, its own area and sometimes its own District Officer. Representatives from each tribe in the region sit together to form the Native Urban Court and the Provincial Advisory Council. The Ngoni representatives on these bodies tend to present distinctively Ngoni views to contrast with the views of their colleagues. Thus there may be a discussion on wills. There is an Ngoni view, a Cewa view, and so on. The Ngoni representative repeats the old story about bridewealth, virilocal residence, the rights of the eldest son, and these are recorded as being the Ngoni custom in the matter. Even when discussing such an apparently modern issue as wills, the tendency is to go back to this mythical past. It is in terms of this past, in reality as well as in myth, that Ngoni are different from their neighbours. In the present, as contrasted with Europeans, Ngoni and Cewa are much the same. Ngoni pay bridewealth in the same way as the English eat roast beef. It is a national characteristic, but one located in the minds of men rather than observable in their actions or their aspirations. Instead of the scarifications and totemic observances which distinguish their neighbours, Ngoni express their tribal identity by having distinctive customs which, conveniently, need not be followed.

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184 In the Native Urban Court a similar process appears to operate, but here, unlike at the Advisory Council, there is a greater need to come to grips with real situations which require action, and tribal distinctiveness is tempered with practical reality. In the purely Ngoni Native Courts appeals are made to traditional practice in a different way. The courts are required by the Administration to follow tribal custom and people know that the courts are bound in this way. In fact, however, the courts have continually to deal with new situations and to make decisions which are unprecedented. This is done
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691 under the guise of drawing attention to some good Ngoni custom which has
692 been neglected. Thus, for example, a man came to court saying that he was
183 always quarrelling with his wife and that he wished to divorce her. The bench
[586] granted the divorce and awarded the woman 30s. damages. The litigant
protested. The junior member of the bench, a man aged about 25 years, said,
"Don't you know, it has always been the custom in this court to award 30s.
damages against men who divorce their wives?" Yet this was a comparatively
recent practice and the litigant's protest seemed, to me, to be quite justified.
The young man had been on the bench only about eighteen months. Even
without Administrative stimulus, deliberate acts of legislation are not un-
known among the Ngoni, but they require considerable discussion and
probably a tribal meeting. It is easier, particularly for a court member as
junior as the man in question, to appeal to the unwritten corpus of tribal
custom when introducing a new rule. An analogous process in our own
society is perhaps concealed under the fiction that judges do not make law.
Ngoni do not quote specific precedents in court, and in this undocumented
environment new decisions, if they are not soon challenged, become part of
what has always been the custom since time immemorial.

182 We may then summarize by saying that their common store of notions
692 about the past provides Ngoni with a means of distinguishing themselves
from similar groups at a time when the cultural distinctions between these
groups are in fact becoming less and less. In the Courts, appeals to the value
of traditional custom are made to gain acceptance for new rulings, while in
ordinary life breaches of custom are widespread and are not censured.

829 When we consider legends associated with particular groups within the
698 tribe the picture is rather different. Separate groups in the population remem-
ber, and sometimes act in the light of, particular incidents in the past which
link them to other similar groups. Thus village A is linked with village B
because of some incident in the past when the erstwhile leader of A captured
the leader of B, or because at one time the leaders of A and B were brothers.
These incidents, and the present inter-group relations with which they are
associated, are not known universally but only by the groups concerned and
by those near them. Yet in many ways these incidents are of greater practical
significance than the more widely known tribal history. The relationships to
which they give rise, or rather such of these relationships as have persisted,
are remembered at funerals, in the formal exchanges of beer, and in the
settlement of quarrels. There are at first glance no sanctions to maintain
relationships of this kind, and indeed the very separate existence of two
villages A and B may be due to a quarrel followed by a split. But although,
for example, when an old woman dies in A there is no way of directly
forcing a messenger to carry the news to B, there is in fact a great deal of
social pressure on both groups to keep alive the connection between them.
This arises from the general responsibility placed on everyone to preserve
the peace, that is, to preserve the existing social order intact. If there are

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175 ten units of different orders of segmentation in the old system and are
 648 now regarded as ten homologous territorial segments in the new.
 631 Thus one village founded for a group of queens by Mpezeni I has given
 rise to two royal chieftainships, another to one royal chieftainship, and
 a third to a royal chieftainship and a non-royal one. On the other
 hand, there is no chieftainship corresponding to the son of Mpezeni I
 who was next in succession to the main heir.

621 There are royal villages in every county. The oldest royal village
 634 in a county is now the capital of the county, and the lieutenants in the
 178 capital are responsible to the county chief. The minor chiefs have
 continued the process of making new villages for their queens, so that
 in each county the chief lives in a recently formed royal village,
 founded either by himself or by his father, and not in his capital. The
 capital is often the biggest village in the county, while the chief's vil-
 lage is more frequently quite small. It is the name of the capital
 village rather than that of the chief's village that serves as the name of
 the county itself. Thus, while in the old days the national capital
 changed with each new Paramount, the county capitals do not alter.
 The new royal villages founded since 1898 have not the same impor-
 tance in the political structure as had the pre-conquest royal villages.
 This change is reflected in the fact that there is now no real national
 capital in the old sense.

• 692 Disputes in the old days were settled in the village by the head-
 [622] man, or were taken to the regional governor, or to the lieutenants
 of the royal village, for settlement. If the matter could not be settled
 there it was taken to the assembly of the senior lieutenants of
 Mpezeni, whose decision could be set aside only by Mpezeni himself.
 Now each chief has a court, and there is an appeal court on which
 representatives from each of the ten counties sit in turn. In the old
 647 days important decisions were taken by the senior lieutenants, in con-
 sultation with Mpezeni, although the four large royal villages were to
 some extent independent of one another. Sections of the army, for
 [721] instance, appear to have been sent out on raids from a royal village
 without reference to the Paramount.¹ Under the present régime
 [648] meetings of the tribe as a whole are held at Mucumo, a centre established
 by the Administration at which there is a school and a dispensary.
 These are attended by the chiefs and such people as choose to come.
 These meetings are usually sponsored by the Administration, and meet-
 ings to discuss affairs that arise independently of the Administration are

¹ Cf. Gesche, *A Trip to Mpezeni's*, p. 1.

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sometimes held at the Paramount Chief's village. Each minor chief holds meetings for the people in his own county to discuss matters of common interest. 647

Quarrels among the chiefs are mainly in terms of the traditional norms rather than of the new differentiation between them in the Native Authority system. The Paramount Chief may abuse the minor chiefs for not coming to visit him on his return from a journey, or for not bringing beer with them when they come to visit him. In each county there are villages which claim to belong to the chief of some other county, on the ground that they originated from the capital village of that county. These interloping villages increase the pressure on the land of the county in which they are, and friction between the two chiefs concerned may ensue. The chiefs like to be able to offer new land for gardens to the people of their own villages, yet at the same time each chief likes to have as many villages as possible apparently under his sway. Hence there is competition both for the allegiance of the villagers as well as for the land that they occupy. These struggles may be resolved by the Paramount Chief or by the Administration with a redefinition of boundaries or by moving the interloping villages to some other region. The Administration has from time to time placed one county under the tutelage of the chief of another, on grounds of administrative efficiency or the inexperience of a young chief. These moves are interpreted as attempts by one chief to incorporate the county of the other into his own, and allegations of killing by sorcery may be made against one minor chief on the death of another. Attempts have also been made to usurp the paramountcy, but this cannot be done openly under the present régime. 628 [643] [648] [692]

Efforts are also made by members of the royal lineage to achieve the creation of new chieftainships by asserting the traditional autonomy of the rural districts into which the counties are divided for certain purposes. Seen in relation to the old system, these attempts are efforts to increase the segmentation in that branch of the royal lineage which corresponds with the modern county in which they live. It is unlikely that such attempts will be successful, as the policy of the Administration is opposed to the creation of new chieftainships. 631 64

Functions

The principal check on the power of the minor chiefs is that exercised through the Paramount. The Administration, which is always 687 648

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687 sensitive to suggestions that a chief may be oppressing his people,
648 usually works through the Paramount. One minor chief was sent to the Paramount's village for a period of instruction in order that he might learn how to rule wisely. On another occasion a chief who had abused the Administration was fined one month's salary by the Paramount. In both these instances the Administration was the initiator of the Paramount Chief's action, but he may also act without reference to it. It was reported to the Paramount that a certain minor chief had struck one of his subjects who had been slow to offer him beer. The Paramount warned the minor chief that he might kill someone this way, and that he ought to fine people, not to strike them. In a dispute between a minor chief and his court clerk over some new court furniture, which the chief wished to use in his own house, the Paramount intervened and ordered that the chairs be put in the court-house.

643 The Paramount himself is subject to social constraint, and may be criticised by his senior lieutenants. He is advised on how he should behave by these men, and if his behaviour is unsatisfactory they may rebuke him. At county meetings, headmen and others can voice their complaints against the royal house as a whole, and have from time to time protested successfully at such a meeting against too many of the Native Authority posts being filled by members of the royal lineage.

The Native Authority

647 Under the Native Authority system, introduced by the Administration
[648] in 1929, there are a number of paid officials, apart from the chiefs, whose salaries are met by the Native Treasury. They include councillors, assessors, clerks, police, postmen, school attendance officers, and others. The most important of these, and the most highly paid, are the councillors and assessors. They sit once or twice a week in court and hear cases brought before them. Each of the chiefs has a court, and for the most part the cases that come before a county court are brought by people living in the county. When litigants from two counties are involved there is no definite rule as to which court will hear the case and it largely depends on the wish of the instigator of the proceedings. Cases come before the Paramount Chief's county court that concern people from other counties and a litigant may take his case from one chief to another, including the Nyasaland chiefs, in an attempt to obtain a favourable and enforceable decision. The Appeal Court sits at the Paramount Chief's village and is held once a month.

barren with terror, till a great belt of uninhabited territory surrounded Ngoniland on all sides. It was sad to pass through this rich land, left to the wild beasts, to see mouldering smelting furnaces, and other signs of lost industries.

It was when the tribe was still in the height of its devastating tendencies that the Livingstonia Mission came into the country. At first the early pioneers were barely tolerated, and more than once it seemed as if they would have to abandon everything and flee for their lives. But gradually, imperceptibly the preaching of peace began to sweeten and purify the atmosphere, and the horrors of these fighting days became part and parcel of a dreadful past. Three years ago a new paramount chief was elected. At the great council the wild spirits of the tribe tried to rouse the people to celebrate the coronation with a great raid. They danced, threatened and raved, but the younger chiefs, themselves Christians, spoke eloquently for peace, and in the end peace prevailed, and the death knell of the past was sounded. And now there is no more settled, peaceable, law-abiding people in Central Africa. And this victory has been won not by the rattle of Maxim guns, not even by the wisdom of diplomacy, but by the daily teaching of the Gospel of Peace.

The political structure of the tribe is strong and conservative. The father of all the people is the paramount chief. His authority has descended to him through a long line of ancestors, the eldest son of the principal wife succeeding to his father's position. In some cases the head wife has had no sons, then she adopted a son of one of the other wives and he became the heir. The chief's power is nominally absolute, and he is surrounded with a certain regal dignity. It is impressive to see the aristocratic majesty that a great chief can maintain. Though his regal robes may not be more than a dirty bit of blue calico, which is not worth a sou, he walks with a scornful dignity that any European prince might envy. When he sits in his court to some great festival his face is expressionless as granite, with an affected indifference he drinks from his great calabash of beer, and ladles ounces of stuff into his pipe, while his poor subject pleads with passion and eloquence over a matter which may mean death or life to him. Yet behind his nominal power he is controlled and restrained by the voice of his council. His succession may be plain and acknowledged, yet he cannot assume the reins of government until he has been nominated by the sub-chiefs and councillors. Our present chief had to

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613 wait for six or seven years before the procrastinating headmen
 615 could lay aside jealousies, and actually place him in the authority of
 [62] his father. Then when he is crowned he cannot sit in judgment
 [63] or give a decision unless his councillors have been summoned,
 and have deliberated with him. Many a time in the old fierce
 days the councillors and chief argued and defied one another for
 weeks at a time over the question as to whether the white man
 was to be tolerated in the country, and it was the strong affection
 of old Mombera for Dr. Laws, and Wm. Koyi which alone held in the
 dogs of war, and prevented his councillors from going forth on an
 exterminating expedition. Yet in spite of the great power of the
 chief he lives as father of the people with all the villagers as his
 children. His house is like their own, built right in the centre of
 the village. The poorest slave has access to him, and he hands his
 [64] beer pot or his snuff to the meanest villager when he would
 show him friendliness.

[65] Under the paramount chief there are four great sub-chiefs, and
 [66] each of them has his councillors and headmen. Then these
 [67] headmen have each a group of villages under their control. They
 [68] hear and dispose of petty quarrels between the villagers. Cases
 in which headmen are involved go to the sub-chief, and cases in
 which the sub-chiefs are involved, and all great tribal affairs,
 go to the paramount chief. The tribal council is an impressive
 615 sight. Just before I came here I had the privilege of being present
 in one of these great gatherings of the tribe. It had met to discuss
 the advisability of coming under the British Protectorate. The
 great chief, Chintunga, had sent out his messengers to call to
 council all the sub-chiefs and headmen. They marched into the
 [69] chief's kraal on the appointed day, each sub-chief followed by his
 councillors and hundreds of armed warriors, all walking in single
 file, and dressed in their gaudiest clothes. They sat round the
 kraal till thousands were present. By-and-bye the paramount
 [70] chief walked in, followed by his brothers and council. He was
 greeted by a roar of salutation, and took his seat. When the case
 was opened, and the subject introduced, the fathers of the people
 rose one after the other and saluted the chief, and then addressed
 the people. The speakers walked up and down, speaking with
 [71] considerable incisiveness and eloquence, their language full of
 metaphors and traditional allusions. Then the chief spoke,
 closing the discussion. Immediately it was ended and the royal
 [72] salutation given, a warrior leapt into the circle with a war cry, fell

down at the chief's feet, and with a shout dashed up again and danced a furious war dance. His eyes fixed and staring with passion, every muscle distended, he stabbed into the air with his spear, tossed the dust of the kraal about, and leapt hither and thither in a frenzy of passion. All the while he kept shouting his battle-cry, and the thousands of fighting men around beat their spears and chanted a chorus. When he had exhausted himself, another headman leapt into the circle and went through his own peculiar wild dance, and then another and another, and for half-an-hour or more these fantastic exhibitions were maintained. Then the chief rose. A great roar of salutation greeted him. Gathering his clothes about him he walked in procession from the kraal, and the council broke up. [645] [535] [43]

In the olden days the power of the chiefs was maintained by a wholesome dread of his warriors, and the laws were enforced with a consistent severity. One result of this is that the Ngoni tribe has always had a higher standard of morality than any Central Africa people. Some persons were stealing mission cattle and complaints were made to the chief. After a time a thief was caught, and then in spite of the pleadings of the missionary the highest penalty was meted out to him. He was hanged on a tree opposite the mission house, and it was forbidden to remove his body. The hyenas wore a path round the foot of the tree trying to get at the carcase, and there he hung, a terrible example to the neighbourhood, until the white ants ate the rope by which he hung, and the body fell to the waiting hyenas. [692] [685]

I have seen a chief receive news of the adultery of one of his wives, turn to his executioner, and give him instructions, and in a few minutes both man and woman were lying dead outside the village. I have myself begged for the life of a woman who had sinned, and she was spared only after a great fine in cattle was levied instead. [684] [43]

These were harsh and terrible punishments, necessary for rough times. And now when the chief is losing some of his old authority, and dare not exercise capital punishment because of the overshadowing British Government, one fears that except where the power of religion has taken the place of the old dread, a weaker morality is apt to sap the vitality of the tribe. The punishments were not arbitrary. They were fixed by precedent. And all the past quarrels for forty or fifty years back would be quoted to prove the right of a plaintiff or defender. And now [177] [681]

177 when the death penalty can hardly be exacted, or compensation
68 made in the delivery over of slaves, they find it hard to satisfy demands and make a show of justice.

171 Now let us speak of the social life of the people. The Ngoni
361 differ from most of the Central Africa tribes in their habit of living in large unprotected villages. The tendency of most of the other tribes is to scatter themselves in very little hamlets over a wide area, with scarcely a path of communication between the villages. Where war has harassed them they have built huge stockaded villages for their mutual protection, but as soon as assured peace has come again, the towns have split into numerous distant groups of houses. This seems to be caused by the dread and mistrust of one another which the people have through their superstitious belief in a evil eye, and in witchcraft, and through the perpetual little quarrels that arise. A carrier who was accompanying a friend of mine described this state very well when they passed a little village of four huts, and then a few hundred yards farther on an isolated hut. Holding up his hand he cried, "Look at Mr. Thumb saying to Messrs. Fourfingers, keep your distance."

361 The heart of a Ngoni village is the large circular cattle kraal.
692 There all the court cases are tried, there the visitors are received,
574 and there the dances are held. Round the kraal the village of
535 beehive huts is built in regular rows, and then immediately out-
342 side the gardens begin. The village life takes the place of family
621 life, and the headman is father of all the people. The boys after they have attained to twelve years of age or so live in huts by themselves, and the girls in huts on the opposite side of the village.
591 These girls' quarters used to be most sacredly guarded, and any man found in their enclosure after dark could be killed.

567 The great part of the Ngoni nation consists of domestic slaves.
537 They are people, or the descendants of people, who have been
762 captured in raiding expeditions. But their position is not a hard one. If they are discontented they may change masters. They give their masters a little free labour, and in return are made members of his family; he espouses all their quarrels, looks after them in sickness, and shares some of his superfluity with them, but they have to share some of their necessities with him.

595 Polygamy was the universal custom of the people until recently. Now hundreds of polygamous unions are being dissolved every year. But in the rougher days polygamy was a necessary

borne out in Roman days also, that the handier, and more artful and skilful people have usually a lower social morality than the fighting races. Our Ngoni came to Nyasaland as a moral blessing. The ordinary obscenity of the indigenous people was not for a moment tolerated among the Ngoni. It is very appalling to hear and see how degraded were the Tumbuka into whose land they came. A people among whom virginity was unknown, where family relationship was no defence, where men and women lived in an atmosphere that was charged with vice. But when the Ngoni came, many of the foul practices of the Tumbuka were punished with death. Their obscene dances were prohibited, many of their superstitious customs were banned, and generally a higher type of morality was superimposed.

The aristocratic Ngoni is a gentleman through and through. His word is absolute. When he gives a promise you may fearlessly rely on it. He does not steal, nor does he intrude on your privacy. I have heard the old men storm in a village because some boys stood around staring at me, or speaking. Before a superior they should sit down, and remain silent, or only speak in whispers. When they address you they always give you your family name of honour, or if they don't know it, round off each sentence with a "sire." When you come into a village you sit at the gate of the cattle kraal and wait for your reception. After a long time the elders of the village appear. Their courtesy is that the longer the wait the greater the welcome. For if they come out quickly they seem to say you had better clear out quickly. When they appear they sit down at some distance, and remain silent. You must not speak till you are spoken to. After a decent interval, they come forward, sit down, and leisurely say, "We see you, sire." Then you reply, "Yes, sire." That is the whole courtesy. Conversation may now begin. When you would rise to go, you first of all say, "Remain in peace, sire," and they reply, "Yes, and go thou in peace, sire." It is very courteous and friendly, and they accompany you along the path a little way, and again send you off with salutation.

Their village life is not without interests and amusements. During the day in the head villages there are continual trials in open court—trials which last for hours and days with continual speech-making. In the evenings the kraal echoes with the chorus of village dances. Quite the prettiest and most delightful dance is the village competitive dance which is held during the day. A

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